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Commercial Practices

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PARTS 150 TO 999

Revised as of January 1, 1986

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Commercial Practices

16

PARTS 150 TO 999

Revised as of January 1, 1986

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Cite this Code CFR
thus: 16 CFR 228.0

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,

Director,

Office of the Federal Register.

January 2, 1986

THIS TITLE

Title 16—COMMERCIAL PRACTICES is composed of three volumes. The first two volumes containing Parts 0-149, and Parts 150-999, comprise Chapter I—Federal Trade Commission. The third volume including Part 1000 to end contains Chapter II—Consumer Product Safety Commission. The first volume containing Parts 0-149 has a Redesignation Table. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

For this volume, Gertrude E. Belton was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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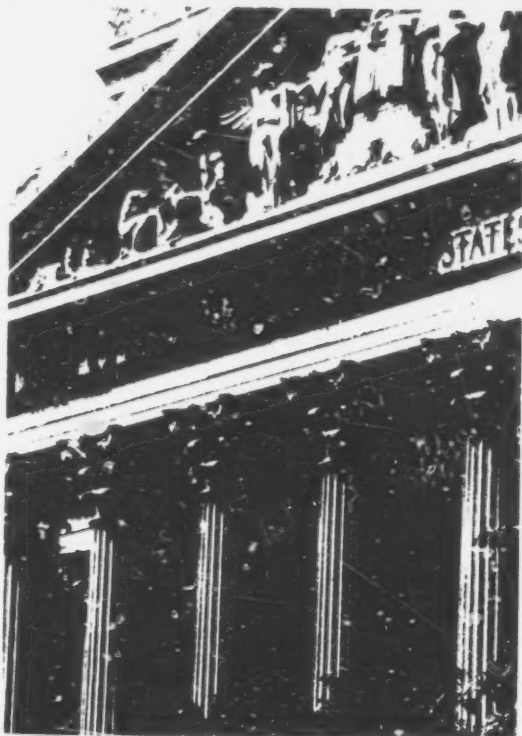
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SUPPLEMENTAL PUBLICATIONS: *Federal Trade Commission decisions, Volumes 1-90 Index digest of volumes 1, 2, and 3 of decisions of the Federal Trade Commission with annotation of Federal cases. Mar. 16, 1915-June 30, 1921. Statutes and decisions pertaining to the Federal Trade Commission. 1914-1929, 1930-1938, 1939-1943, 1944-1948, 1949-1955, 1956-1960, 1961-1965, 1966-1970, 1971-1975, 1976, 1977.*

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- 228.0-1 Use of guide principles.
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- 228.19 Snow tire advertising.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15525, Nov. 8, 1967, unless otherwise noted.

§ 228.0 "Industry Product" and "Industry Member" defined.

As used in this part, the terms "Industry Product" or "Product" shall mean pneumatic tires for use on passenger automobiles, station wagons, and similar vehicles, or the materials used therein. The term "Industry Member" shall mean: All persons or firms who are engaged in the manufacture, sale or distribution of industry products as above defined whether under the manufacturer's or a private brand; and the manufacturers of passenger automobiles, station wagons, and similar vehicles for which industry products are provided as original equipment.

§ 228.0-1 Use of guide principles.

The following general principles will be used in determining whether terminology and other direct or indirect representations subject to the Commission's jurisdiction regarding industry products conform to laws administered by the Commission.

§ 228.1 Tire description.

(a) The purchase of tires for a motor vehicle is an extremely important matter to the consumer. Not only are substantial economic factors involved, but in most instances the purchaser will entrust the safety of himself and others to the performance of the product.

(b) To avoid being deceived, the consumer must have certain basic information. Certain of this information should be provided before the purchaser makes his choice but other is essential throughout the life of the tire.

(1) *Disclosure before the sale.* The following information should be disclosed in point of sale material which is prominently displayed and of easy access, on the premises where the purchase is to be made in order to appraise the consumer:

(i) *Load-carrying capacity of the tire.* This information is essential to assure the purchase, that the tires he selects are capable of safely carrying the intended load. This information should consist of the maximum load-carrying capacity as related to various recommended air pressures and may include data which indicates the effect such varying pressures will have on the operation of the automobile. All such information shall be based on actual tests utilizing adequate and technically sound procedures. The test procedures and results shall be in writing and available for inspection.

(ii) *Generic name of cord material.* Different cord materials can have performance characteristics that will affect the consumer's selection of tires. These various characteristics are widely advertised, and the consumer is

aware of the distinctions. Without a disclosure of the generic name of the cord material, the consumer is unable to consider this factor in his purchase.

(iii) *Actual number of plies.* Consumers have preference for industry products of a stated type of construction (e.g., 2 ply v. 4 ply). Without adequate disclosure the consumer is denied the basis for considering this factor in his selection.

NOTE: Where the tire is of radial construction the ply count disclosure will be satisfied by the statement "radial ply."

(2) *Disclosure on the tire.* The following information should be clearly disclosed in a permanent manner on the outside wall of the tire:

(i) *Size.* Size is extremely important not only to insure that the tire will fit the vehicle wheel, but because it also is a determining factor as to the load-carrying capacity of the vehicle.

(ii) *Whether tire is tubeless or tube type.*

(iii) *Actual number of plies.*

NOTE: Where the tire is of radial construction the ply count disclosure will be satisfied by the statement "radial ply."

(3) *Other disclosures—(i) Generic name of cord material used in ply.* A disclosure of the generic name of the cord material used in the ply of the tire should be made on a label or tag prominently displayed on the tire itself, and affixed in such a fashion that it cannot be easily removed prior to sale.

(ii) *Load-carrying capacity and inflation pressure.* One of the most important factors in obtaining tire performance is proper care and use. Included in such care is inflating the tire to the required level as related to load-carrying capacity and use. To insure that such pressures are maintained by the user and the tire is not overloaded beyond its safe capacity, a table or chart should be provided for retention by the purchaser. This will apprise the purchaser of the load-carrying capacity of the tires as related to the range of recommended air pressures and use. It may also supply data which indicate the effect such varying pressures will have on the operation of the automobile.

NOTE: Automobile manufacturers who provide tires as original equipment with new automobiles should incorporate such information in the owner's manual given to new car purchasers.

[Guide 1]

[32 FR 15525, Nov. 8, 1967, as amended at 33 FR 982, Jan. 26, 1968]

§ 228.2 Designations of grade, line, level, or quality.

(a) There exists today no industry-wide, government or other accepted system of quality standards or grading of industry products. Within the industry, however, a variety of trade terminology has developed which, when used in conjunction with consumer transactions, has the tendency to suggest that a system of quality standards or grading does in fact exist. Typical of such terminology are the expressions "line," "level," and "premium." The exact meaning of such terminology may vary from one industry member to another. Therefore, the "1st line" or "100 level" or "premium" tire of one industry member may be grossly inferior to the "1st line" or "100 level" or "premium" tire of another member since in the absence of an accepted system of grading or quality standards, each member can determine what "line," "level," or "premium" classification to attach to a tire.

(b) The consumer does not understand the significance of the absence of accepted grading or quality standards and is likely to assume that the expressions "line," "level," and "premium" connote valid criteria. Since the consumer is likely to misinterpret the meaning of such terminology, he may be deceived into purchasing an inferior product because it has been given such designation.

(c) In the absence of an accepted system of grading or quality standards for industry products, it is improper to represent, either through the use of such expressions as "line," "level," "premium" or in any other manner, that such a system exists, unless the representation is accompanied by a clear and conspicuous disclosure:

(1) That no industrywide or other accepted system of quality standards

or grading of industry products currently exists, and

(2) That representations as to grade, line, level, or quality, relate only to the private standard of the marketer of the tire so described (e.g., "XYZ first line").

(d) Additionally, products should not be described as being "first line" unless the products so described are the best products, exclusive of premium quality products embodying special features, of the manufacturer or brand name distributor applying such designation. [Guide 2]

§ 228.3 Deceptive designations.

In the advertising or labeling of products, industry members should not use designations for grades of products they offer to the public:

(a) Which have the capacity to deceive purchasers into believing that such products are equal or superior to a better grade or grades of their products when such conclusion would be contrary to fact (for example, if the "first line" tire of a manufacturer is designated as "Standard," "High Standard," or "Deluxe High Standard," the tires of that manufacturer which are of lesser quality should not be designated or described as "Super Standard," "Supreme High Standard," "Super Deluxe High Standard," or "Premium"), or

(b) Which are otherwise false or misleading.

NOTE: When a manufacturer applies a designation to a product which falsely represents or implies the product is equal or superior in quality to its better grade or grades of products, it is responsible for any resulting deception whether it is a direct result of the designation or a result of the placing in the hands of others a means and instrumentality for the creation by them of a false and deceptive impression with respect to the comparative quality of products made by that manufacturer.

[Guide 3]

§ 228.4 Original equipment.

Original equipment tires are understood to mean the same brand and quality tires used generally as original equipment on new current models of vehicles of domestic manufacture. A tire which was formerly but is not cur-

rently used as "Original Equipment," should not be described as "Original Equipment" without clear and conspicuous disclosure in close conjunction with the term, of the latest actual year such tire was used as "Original Equipment." [Guide 4]

§ 228.5 Comparative quality and performance claims.

Representations and claims made by industry members that their products are superior in quality or performance to other products should not be made unless:

(a) The representation or claim is based on an actual test utilizing adequate and technically sound procedures of the performance of the advertised product and of the product with which it is compared; the test procedure, results of which are in writing and available for inspection; and

(b) The basis of the comparison is clearly stated and the comparison is based on identical conditions of use. Dangling comparatives should not be used.

(c) Claims or representations that one tire is comparable or identical to another should not be used unless the advertiser is able to establish that such tires are comparable not only as respects the molds in which the tires are made, but also as respects all significant materials used in their construction. [Guide 5]

§ 228.6 Ply count, plies, ply rating.

A ply is a layer of rubberized fabric contained in the body of the tire and extending from one bead of the tire to the other bead of the tire. The consumer is interested in, and is entitled to know, certain information in regard to plies in tires. However, a great deal of terminology connected with plies which is utilized in advertising has the tendency to confuse and deceive the public and is accordingly inappropriate.

(a) It is improper to utilize any statement or depiction which denotes or implies that tires possess more plies than they in fact actually possess. Phrases such as "Super 6" or "Deluxe 8" as descriptive of tires of less than 6

or 8 plies, respectively, should not be used.

(b) The actual number of plies in a tire is not necessarily determinative of the ultimate strength, performance or quality of the product. Variations in the amount and type of fabric utilized in the ply and other construction features of the tire will determine the ultimate strength, performance or quality of the product. Through variations in these construction aspects, a tire of a stated number of plies may be inferior in strength, quality, and performance to another tire of lesser actual ply count. Accordingly, it is improper to represent in advertising, or otherwise, that solely because a product has more plies than another, it is superior.

(c)(1) The expression "ply rating" as used in the trade is an index of tire strength. Each manufacturer, however, has his own system of computing "ply rating." Thus, a product of one industry member of a stated "ply rating" is not necessarily of the same strength as the product of another member with the identical rating. While the expression "ply rating" may have significance to industry members, in the absence of a publicized system of standardized ratings, the use of such expressions in connection with sales to the general public may be deceptive.

(2) To avoid deception, the expression "ply rated" or "ply rating" or any similar language should not be used unless said claim is based on actual tests utilizing adequate and technically sound procedures, the results of which are in writing and available for inspection. Further, certain disclosures must be made when such expressions are used in connection with consumer transactions.

(3) When ply rating is stated on the tire itself, it must be accompanied in immediate conjunction therewith, and in identical size letters, the disclosure of the actual ply count. In addition, there must be a tag or label attached to the tire or its packaging, of such permanency that it cannot easily be removed prior to sale to the consumer, which tag or label contains a clear and conspicuous disclosure:

(i) That there is no industrywide definition of ply rating; and

(ii) Of the basis of comparison of the claimed rating. (For example, "2-ply tire, 4-ply rating means this 2-ply tire is equivalent to our current or most recent 4-ply nylon cord tire.")

(4) When ply rating is used in advertising or in other sales or promotional materials, in addition to the disclosure of actual ply count as indicated, it must be accompanied by the disclosure:

(i) That there is no industrywide definition of ply rating; and

(ii) Of the basis of comparison of the claimed rating. (For example, "2-ply tire, 4-ply rating means this 2-ply tire is equivalent to our current or most recent 4-ply nylon cord tire.") [Guide 6]

§ 228.7 Cord materials.

(a) The fabric that is utilized in the ply is known as the cord material. The use of a particular type of cord material may be determined by the use to which the tire will be placed. One type of cord material may provide one desired characteristic, but not be used because of other characteristics which may be unfavorable.

(b) The type of cord material utilized in a tire is not necessarily determinative of its ultimate quality, performance or strength. Through variations in the denier of the material, the amount to be used and other construction aspects of the tire, the ultimate quality, performance, and strength is determined.

(c) It is improper to represent in advertising, or otherwise, that solely because a particular type of cord material is utilized in the construction of a tire, it is superior to tires constructed with other types of cord material. Such advertising is deceptive for it creates that impression in the consumer's mind whereas in fact it does not take into consideration the other variable aspects of tire construction.

(d) When the type of cord material is referred to in advertising, it must be made clear that it is only the cord that is of the particular material and not the entire tire. For example, it would be improper to refer to a product as "Nylon Tire." The proper description is "Nylon Cord Tire." Similarly, when

the manufacturer of the cord material is mentioned, it should be made clear that he did not manufacture the tire. For example, a tire should be described as "Brand X Nylon Cord Material" and not "Brand X Nylon Tire."

(e) Cord material should be identified by its generic name when referred to in advertising. [Guide 7]

§ 228.8 "Change-Overs," "New Car Take Offs," etc.

Industry products should not be represented as "Change-Overs" or "New Car Take Offs" unless the products so described have been subjected to but insignificant use necessary in moving new vehicles prior to delivery of such vehicles to franchised distributor or retailer. "Change-Overs" or "New Car Take Offs" should not be described as new. Advertisements of such products should include a clear and conspicuous disclosure that "Change-Overs" or "New Car Take Offs" have been subjected to previous use. [Guide 8]

§ 228.9 Retreaded and used tires.

Advertisements of used or retreaded products should clearly and conspicuously disclose that same are not new products. Unexplained terms, such as "New Tread," "Nu-Tread" and "Snow Tread" as descriptive of such tires do not constitute adequate disclosure that tires so described are not new. All such tires should be clearly designated as "retreads" or "retreaded." [Guide 9]

§ 228.10 Disclosure that products are obsolete or discontinued models.

Advertisements should clearly and conspicuously disclose that the products offered are discontinued models or designs or are obsolete when such is the fact.

NOTE: The words "model" and "design" used in connection with tires include width, depth, and pattern of the tread as well as other aspects of their construction.

[Guide 10]

§ 228.11 Blemished, imperfect, defective, etc., products.

Advertisements of products which are blemished, imperfect, or which for any reason are defective, should con-

tain conspicuous disclosure of that fact. In addition, such products should have permanently stamped or molded thereon, or affixed thereto and to the wrappings in which they are encased a plain and conspicuous legend or statement to the effect that such products are blemished, imperfect, or defective. Such markings by a legend such as "XX" or by a color marking or by any other code designation which is not generally understood by the public are not considered to be an adequate disclosure. [Guide 11]

§ 228.12 Pictorial misrepresentations.

(a) It is improper to utilize in advertising, any picture or depiction of an industry product other than the product offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith should be the exact tire offered for sale at the advertised price.

(b) For example, it would be improper to depict a white side wall tire with a designated price when the price is applicable to black wall tires. Such practice would be improper even if a disclosure is made elsewhere in the advertisement that the featured price is not for the depicted whitewalls. [Guide 12]

§ 228.13 Racing claims.

(a) Advertising in connection with racing, speed records, or similar events should clearly and conspicuously disclose that the tires on the vehicle are not generally available all purpose tires, unless such is the fact.

(b) The requirement of this section is applicable also to special purpose racing tires, which although available for such special purpose, are not the advertiser's general purpose product.

(c) Similarly, designations should not be utilized in conjunction with any industry product which falsely suggest, directly or indirectly, that such product is the identical one utilized in racing events or in a particular event. [Guide 13]

§ 228.14 Bait advertising.

(a) Bait advertising is an alluring but insincere offer to sell a product which the advertiser in truth does not intend

or want to sell. Its purpose is to obtain leads as to persons interested in buying industry products and to induce them to visit the member's premises. After the person visits the premises, the primary effort is to switch him from buying the advertised product in order to sell something else, usually at a higher price.

(b) No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. Among the acts and practices which will be considered in determining if an advertisement is bona fide are:

(1) The advertising of a product at a price applicable only to unusual or off size tires or for special purpose tires;

(2) The refusal to show or sell the product offered in accordance with the terms of the offer;

(3) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that the supply is limited and/or the merchandise is available only at designated outlets;

(4) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, or in any other respect in connection with it;

(5) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 14]

§ 228.15 Deceptive pricing.

(a) *Former price comparisons.* One form of advertising in the replacement market is the offering of reductions or savings from the advertiser's former price. This type of advertising may take many forms, of which the following are examples:

Formerly \$----- Reduced to \$-----,
50% Off—Sale Priced at \$-----.

Such advertising is valid where the basis of comparison, that is, the price on which the represented savings are based, is the actual bona fide price at which the advertiser recently and reg-

ularly sold the advertised tire to the public for a reasonably substantial period of time prior to the advertised sale. However, where the basis of comparison (1) is not the advertiser's actual selling price, (2) is a price which was not used in the recent past but at some remote period in the past, or (3) is a price which has been used for only a short period of time and a reduction is claimed therefrom, the claimed savings or reduction is fictitious and the purchaser deceived. Following are examples illustrating the application of this provision:

Example 1. Dealer A advertises a tire as follows: "Memorial Day Sale—Regular price of tire, \$15.95—Reduced to \$13.95." During the preceding 6 months Dealer A has conducted numerous "sales" at which the tire was sold in large quantities at the \$13.95 price. The tire was sold at \$15.95 only during periods between the so-called "sales." In these circumstances, the advertised reduction from a "regular" price of \$15.95 would be improper, since that was not the price at which the tire was recently and regularly sold to the public for a reasonably substantial period of time prior to the advertised sale.

Example 2. Dealer B engaged in sale advertising weekly on the last 3 days of the week. It was his practice during the selling week to offer a particular line of tires at \$24.95 on Monday, Tuesday, and Wednesday, and advertise the same line as "Sale Priced \$19.95" on the final 3 days of the selling week. Use of the price for only 3 days prior to the reduction, even though the higher price is resumed after 3 days of "sale" advertising would not constitute a basis for claiming a price reduction. The higher price was not the regular selling price for a reasonably substantial period of time. Furthermore, when the higher price is used only for the first 3 days of the week and another price is used for the final 3 days, the higher price has not been established as a regular price, especially when most sales are made at the lower price during the final 3-day period.

(b) *Trade area price comparisons.*

(1) Another recognized form of bargain advertising is to offer tires at prices lower than those being charged by others for the same tires in the area where the advertiser is doing business. Examples of this type of advertising where used in connection with the advertiser's own price are:

Sold Elsewhere at \$-----.

Retail Value \$-----.

(2) The tire market, because of its nature, requires that special care and precaution be exercised before this type of advertising is used. Trade area price comparisons are understood by purchasers to mean that the represented bargain is a reduction or saving from the price being charged by representative retail outlets for the same tires at the time of the advertisement.

(3) If a tire manufacturer decides to conduct a promotion of a particular tire, reduces the price in his wholly owned stores and independent dealers follow the promotion price, the "sale" price has become the retail price in the area and it would be deceptive to represent that this "sale" price is reduced from that charged by others. In most circumstances where a promotion is sponsored by the manufacturer and is followed by the wholly owned stores and most of the independent dealers in the area, such trade area price comparisons would be improper.

(4) A trade area price comparison would be valid where an individual dealer, acting on his own, decides to lower the price of a tire significantly below that being charged by others in his area. In this situation, he would be honestly offering a genuine reduction from the price charged by others in his area.

(5) When using a retail price comparison great care should be exercised to make the advertising clear that the basis of the reduction or saving is the price being charged by others and not the advertiser's own former selling price.

(c) *Substantiality of reduction or savings.* In order for an advertiser to represent that a price is reduced or offers savings to purchasers without specifying the extent thereof, it is necessary that the represented reduction or savings be significant. When the amount of the reduction or savings is not stated in advertising and is not substantial enough to attract and influence prospective purchasers if they knew the true facts, the representation is deceptive.

Example. Dealer C advertises a Fourth of July sale featuring X brand tires at a claimed reduction in price. The sale price in the advertisement is stated as \$14.75 per

tire. The advertisement does not state the former price of the tire. The tire previously had been sold at \$14.95. Under the circumstances, the advertisement would be deceptive. The 20-cent reduction in price is insignificant when compared with the actual selling price of the tire. Purchasers generally, if they knew the amount of the reduction, would not be influenced sufficiently thereby to cause them to purchase the tire at the reduced price.

(d) *Representations of specific price reductions and savings.* (1) Advertisements which offer a specified amount or percentage of price reduction or savings should not be used where there is no determinable regular selling price, whether it be the advertiser's former price or the retail price in the area.

(2) The lack of a determinable actual selling price does not preclude all "sale" advertising. For example, if a dealer desires to offer a tire at a price which represents a significant reduction from the lowest price in the range of prices at which he has actually sold the tire in the recent regular course of his business, it would not be deceptive to advertise the tire with such representations as "Sale Priced," "Reduced" or "Save."

(3) However, an advertiser is not precluded from offering specific savings from the lowest price at which he has actually sold tires, provided that the advertising clearly states that the offered savings are a reduction from the lowest previous selling price and not from the advertiser's regular selling price.

(e) *No trade-in prices.* (1) The most common device used in advertising is to offer a purported reduction or savings from a so-called "no trade-in" price. Prospective purchasers are entitled to believe this to mean that they would realize a savings from the price they would have had to pay for the tire prior to the "Sale," either in cash or in cash plus the fair value of a traded-in tire. If this is not true, purchasers are deceived. Where a significant number of sales in relation to a seller's total sales is not made at the so-called "no trade-in" price and such price appreciably exceeds the price purchasers would normally pay the seller (including the fair value of any

trade-in), use of the price as a basis for claiming a reduction or savings would be deceptive and contrary to this part.

(2) Representations of high trade-in allowances are sometimes used in combination with fictitious "no trade-in" prices to deceive purchasers. These may take the form of direct representations that a specified amount (usually significantly higher than the value of the tire carcass) will be allowed for a trade-in tire, or, representations of specific savings in the purchase of a new tire when a tire is traded in during a "sale." In either case, the purchaser is given the illusion of a bargain in the guise of a high trade-in allowance which he does not in fact receive if the amount of the allowance is deducted from a fictitiously high "no trade-in" price.

Example 1. An advertisement offers a 25 percent reduction during a May tire sale. The body of the advertisement sets forth a "no trade-in" price as the price from which the represented 25 percent reduction is made. However, such price represents the price at which only 15 percent of the advertiser's total sales were made and which was appreciably higher than the price at which the tire usually sold with a trade-in even with the addition of an amount representing a reasonable, bona fide trade-in allowance. Use of the "no trade-in" price in the advertisement is deceptive.

Example 2. Dealer D advertises, "Now Get \$4 to \$10 Per Tire Trade-In Allowance" in connection with the sale of a certain tire. Dealer D has regularly sold the tire for \$12 to customers having a good recappable tire to offer in trade. During the regular course of Dealer D's business he has granted allowances ranging from 50 cents to \$3, depending upon the condition of the tire taken in trade. During the advertised sale, however, Dealer D sells all of the tires at the manufacturer's suggested "no trade-in" price of \$22 and deducts from that price the inflated trade-in allowances. Under the circumstances, the advertisement would be deceptive. Dealer D has not granted the allowances in connection with his regular selling price but has used instead the fictitious "no trade-in" price as a basis for offering the inflated allowances. The consumer has been led to believe that his old tire is worth far more than its actual value and Dealer D receives what has been his regular selling price or, in some instances, an amount in excess of the regular price, depending upon the allowance granted.

(f) *Combination offers.* (1) Frequent use is made in the tire market of pur-

ported bargain advertising which offers "free" or at a represented reduced price a tire, some other article of merchandise or a service, with the purchase of one or more tires at a specified price. The following are typical examples of this type of offer:

Buy 3, get four at no additional cost.

Buy one tire at \$—, get second tire at 50% off.

Get a wheel free with purchase of each snow tire.

Free wheel alignment with purchase of two new tires.

Such advertising is understood by purchasers to mean that the price charged by the advertiser for the initial tire or tires to be purchased is the price at which they have been regularly sold by the advertiser for a reasonably substantial period of time prior to the sale, and that the amount of the purported reduction or the value of the so-called "free" article or service represents actual savings. If the price of the tires to be purchased is not the advertiser's regular selling price, purchasers are deceived.

Example. Dealer E advertises "2nd Tire ¼ Off When You Buy First Tire At Price Listed Below—No Trade-In Needed!" In the body of the advertisement the first tire is listed as costing \$25.15 and the second tire \$12.57. The figure listed as the price for the first tire is not Dealer E's regular selling price, but the manufacturer's suggested "no trade-in" price. E's regular selling price prior to the so-called sale had been \$18.85 per tire. Under the circumstances, the "¼ Off" offer would be deceptive. The basis for the advertised offer is not the advertiser's actual selling price for the tire. While consumers are led to believe that they are being afforded substantial savings by purchasing a second tire, in fact they are paying Dealer E's regular selling price for two tires.

(g) *Federal Excise Tax.* Since the Federal Excise Tax on tires is assessed on the manufacturer and is based on the weight of the materials used and not the retail selling price, the tax should be included in the price quoted for a particular tire, or the amount of the tax set out in immediate conjunction with the tire price. For example, assuming the tax on a particular tire to be \$1 and the advertised selling price \$9.95, the price should be stated as "\$10.95" or "\$9.95 plus \$1 Federal

Excise Tax" and not "\$9.95 plus Federal Excise Tax."

(h) *Advertising furnished by tire manufacturers.* It is the practice of some tire manufacturers to supply advertising to independent as well as to wholly owned retail outlets in local trade areas. A tire manufacturer providing advertising material to be used in local trade areas by either wholly owned or independent outlets is responsible for the representations made in such advertising and should base price and savings claims on conditions actually existing in the particular areas. In view of price fluctuations at the local level, the general dissemination (i.e., in more than one trade area) to independent retail outlets of advertising material containing stated prices or reduction claims results in deception¹ and is, accordingly, contrary to this part. [Guide 15]

§ 228.16 Guarantees.

(a) In general, any advertising containing a guarantee representation shall clearly and conspicuously disclose:

(1) *The nature and extent of the guarantee.* (i) The general nature of the guarantee should be disclosed. If the guarantee is, for example, against defects in material or workmanship, this should be clearly revealed.

(ii) Disclosure should be made of any material conditions or limitations in the guarantee. This would include any limitation as to the duration of a guarantee, whether stated in terms of treadwear, time, mileage, or otherwise. Exclusion of tire punctures also would constitute a material limitation. If the guarantor's performance is conditioned on the return of the tire to the dealer who made the original sale, this fact should be revealed.

(iii) When a tire is represented as "guaranteed for life" or as having a "lifetime guarantee," the meaning of the term "life" or "lifetime" should be explained.

¹This part does not deal with the question of whether such practice may be improper as contributing to unlawful restraints of trade connected with the enforcement of the Antitrust Laws and the Federal Trade Commission Act.

(iv) Guarantees which under normal conditions are impractical of fulfillment or for such a period of time or number of miles as to mislead purchasers into the belief the tires so guaranteed have a greater degree of serviceability or durability than is true in fact, should not be used.

(2) *The manner in which the guarantor will perform.* This consists generally of a statement of what the guarantor undertakes to do under the guarantee. Types of performance would be repair of the tire, refund of purchase price or replacement of the tire. If the guarantor has an option as to the manner of the performance, this should be expressly stated.

(3) *The identity of the guarantor.* The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the retailer is the guarantor.

(4) *Pro rata adjustment of guarantees—(i) Disclosure in advertising.* Many guarantees provide that in the event of tire failure during the guarantee period a credit will be allowed on the purchase price of a replacement tire, the amount of the credit being in proportion to the treadwear or time remaining under the guarantee. All advertising of the guarantee should clearly disclose the pro rata nature of the guarantee and the price basis upon which adjustments will be made.

(ii) *Price basis for adjustments.* Usually under this type of guarantee the same predetermined amount is used as a basis for the prorated credit and the purchase price of the replacement tire. If this so-called "adjustment" price is not the actual selling price but is an artificial, inflated price the purchaser does not receive the full value of his guarantee. This is illustrated by the following example:

"A" purchases a tire which is represented as being guaranteed for the life of the tread. After 75 percent of the tread is worn, the tire fails. The dealer from whom "A" seeks an adjustment under his guarantee is currently selling the tire for \$15 but the "adjustment" price of the tire is \$20. "A" receives a credit of 25 percent or \$5 toward

the price of the replacement tire. This credit is applied not on the actual selling price but on the artificial "adjustment" price of \$20. Thus, "A" pays \$15 for the new tire which is the current selling price of the tire.

Under the facts described in this illustration the guarantee was worthless as the purchaser could have purchased a new tire at the same price without a guarantee. If 50 percent of the tread remained when the adjustment was made, the purchaser would have received a credit of \$10 toward the \$20 replacement price. He must still pay \$10 for a replacement tire. Had the adjustment been made on the basis of the actual selling price he would have obtained a new tire for \$7.50. Thus, while deriving some value from his guarantee he did not receive the value he had reason to expect under the guarantee.

(b) Accordingly, to avoid deception of purchasers as to the value of guarantees, adjustments should be made on the basis of a price which realistically reflects the actual selling price of the tire. The following would be considered appropriate price bases for making guarantee adjustments:

- (1) The original purchase price of the guaranteed tire; or
- (2) The adjusting dealer's actual current selling price at the time of adjustment; or
- (3) A predetermined price which fairly represents the actual selling price of the tire.

Whenever an advertisement for tires includes reference to a guarantee, the advertisement should also disclose, clearly and conspicuously, the price basis on which adjustments will be made. Such disclosure of the price basis for adjustments should be in terms of actual purchase or selling price, e.g., original purchase price, adjusting dealer's current selling price, etc. A mere reference to a guarantor's "adjustment price," for example, would not satisfy this disclosure requirement. In addition, written material disclosing the basis for adjustments should be made available to prospective purchasers at the point of sale, and if the third method of adjustment is chosen, such written material should include the actual price on

which guarantee adjustments will be made. [Guide 16]

§ 228.17 Safety or performance features.

Absolute terms such as "skidproof," "blowout proof," "blow proof," "puncture proof" should not be unqualifiedly used unless the product so described affords complete and absolute protection from skidding, blowouts, or punctures, as the case may be, under any and all driving conditions. [Guide 17]

§ 228.18 Other claims and representations.

(a) No claim or representation should be made concerning an industry product which directly, by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving purchasers or prospective purchasers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, safety, strength, condition or life expectancy of such products.

(b) Also included among the prohibitions of this section are claims or representations by members of this industry or by distributors of any component parts of materials used in the manufacture of industry products, concerning the merits or comparative merits (as to strength, safety, cooler running, wear, or resistance to shock, heat, moisture, etc.) of such products, components or materials, which are not true in fact or which are otherwise false or misleading. [Guide 18]

§ 228.19 Snow tire advertising.

Many manufacturers are now offering winter tread tires with metal spikes. Certain States, or other jurisdictions, however, prohibit the use of such tires because of possible road damage. Accordingly, in the advertising of such products, a clear and conspicuous statement should be made that the use of such tires is illegal in certain States or jurisdictions. Further, when such tires are locally advertised in areas where their use is prohibited, a clear and conspicuous statement to this effect must be included. [Guide 19]

PART 229—GUIDES FOR ADVERTISING FALLOUT SHELTERS

S.c.

- 229.0 Definitions.
- 229.1 Fallout and blast protection.
- 229.2 Installation.
- 229.3 Affirmative disclosures as to capacity.
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- 229.14 Lottery schemes.
- 229.15 Scare tactics.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15529, Nov. 8, 1967, unless otherwise noted.

§ 229.0 Definitions.

(a) *Fallout shelter.* A structure which, when properly installed, has a protection factor against fallout gamma radiation of at least 40. Protection factor is the relative reduction in the amount of radiation that would be received by a person in a shelter compared with the amount which he would receive if unprotected. For example, an unprotected person would receive 40 times more radiation than a person in a shelter with a protection factor of 40.

(b) *Blast-resistant or limited blast-resistant shelter.* A structure which qualifies as a fallout shelter and, in addition, is capable of affording a certain minimum amount of protection against the effects of a blast overpressure and associated nuclear and thermal radiation. To qualify as a "blast-resistant shelter" a structure must be capable of withstanding an overpressure of at least 25 pounds per square inch (psi). To qualify as a "limited blast-resistant shelter" a structure must be capable of withstanding an overpressure of at least 5 psi. For example, 5 psi overpressure would occur at a range of about 8½ miles from a 10

megaton, and about 18 miles from a 100 megaton explosion. 30 psi overpressure would occur at a range of about 2½ miles from a 10 megaton, and about 5 miles from a 100 megaton explosion.

NOTE: These definitions are based upon the minimum technical requirements established by the Office of Civil Defense, Department of Defense.

§ 229.1 Fallout and blast protection.

(a) A structure shall not be described or designated as a "fallout shelter," or by any other term of like implication, nor shall any representation be made that a structure affords protection against radioactive fallout, unless such structure meets the minimum requirements set forth in the foregoing definition of a "fallout shelter."

(b) A structure shall not be described or designated as a "blast shelter" or by any other term of like implication.

(c) A structure shall not be described or designated as a "blast-resistant shelter" or a "limited blast-resistant shelter," or by any other term of like implication, unless it meets the applicable minimum requirements set forth in this part.

(d) No representation, express or implied, shall be made that a structure affords protection against nuclear blast unless such structure meets the minimum requirements for a "limited blast-resistant shelter."

(e) No advertisement for, or representation as to the characteristics or capabilities of, any structure designated as a "fallout shelter," "blast-resistant shelter," "limited blast-resistant shelter," or any other term of like implication, shall be used without the inclusion of an affirmative disclosure, in clear and conspicuous terms, of the limits of the protection provided by such structure.

Example 1. With reference to a fallout shelter which does not qualify as a "limited blast-resistant shelter," the advertisement should disclose that the structure has not been designed to afford protection against blast or other related hazards.

Example 2. If the structure qualifies as a "limited blast-resistant shelter" or a "blast-resistant shelter," the advertisement should disclose that the structure, when properly

installed, will protect its occupants from a blast of a stated force (such as 10 megatons) occurring an approximate number of miles distant, as set forth in the examples in § 229.0(b).

(f) If a structure meets the minimum requirements for a "fallout shelter," factual and nondeceptive representations may be made as to the degree and nature of fallout protection afforded. Claims that the fallout protection afforded exceeds the requirements shall not be used, however, unless the protection so afforded exceeds the prescribed minimum to a significant degree.

(g) Claims, express or implied, of absolute or complete protection from fallout or blast under any and all conditions shall not be used. [Guide 1]

§ 229.2 Installation.

(a) Any advertisement offering a shelter shall disclose affirmatively that the structure must be properly installed before it can provide protection as a shelter.

(b) No representation shall be made that a shelter can be installed in one day or in any other period of time, unless the installation can in fact be completed within the stated period.

(c) Statements which deceptively exaggerate the ease or economy with which a shelter can be installed shall not be used. [Guide 2]

§ 229.3 Affirmative disclosures as to capacity.

(a) Whenever any representation is made which conveys any implication as to the size or capacity of the advertised shelter, the advertisement must clearly and conspicuously disclose the number of persons the shelter will protect.

(b) Advertisements containing pictures, a quoted price, the use of the word "family," are examples of the type of representations which are subject to the above requirement.

(c) Minimum standard requirements of the Office of Civil Defense in effect at the time the advertised offer is made will be applied in determining the number of persons that the shelter can protect. These requirements take into account the floor space, the air space (cubic volume of the shelter),

and the quantity of fresh air required by each person occupying the shelter. [Guide 3]

§ 229.4 Pictorial and other misrepresentations.

(a) No advertisement shall be used which would mislead prospective buyers, through pictorial representations, or in any other manner, as to the protection afforded by a shelter or as to the size, composition, construction, design, capacity, quality, cost or manner of installation, fire or water-resistant properties, location, or utility of a shelter or any part thereof, or which would be misleading in any other material respect.

(b) All construction items featured in a pictorial representation must be included in the price stated in the advertisement.

Example 1. Picturization of fallout shelters which imply protection against blast effects but which are not capable of providing this protection shall not be used.

Example 2. An advertisement shall not feature the picture of a higher-priced shelter in conjunction with the price of a lower-priced shelter, thus leading consumers to believe the higher-priced model can be purchased at the lower price.

[Guide 4]

§ 229.5 Deceptive prices.

(a) No statement, express or implied, shall be used which misrepresents prices or savings in any manner.

(b) Claims that the price offer is for a limited time only or that there will be an increase in price shall not be used unless in fact true.

(c) Advertised or quoted prices shall include the cost of all parts of the structure which are essential to its functioning as a shelter.

(d) Advertised or quoted prices also shall include all charges for the delivery and installation of the shelter, unless the advertisement clearly and conspicuously discloses that delivery or installation charges are not included.

NOTE: The Guides Against Deceptive Pricing furnish guidance respecting other pricing representations and are to be considered as supplementing this section.

[Guide 5]

§ 229.6 Financial terms.

(a) Installment purchase plans shall not be misrepresented in any manner nor shall an advertiser claim that loans from any lending institution are available, or that such loans may be insured by the Federal Housing Administration, unless such is the fact.

(b) Down payments shall not be quoted in such a manner as to imply that the down payment constitutes the entire price.

(c) If a shelter is offered at a quoted price under an installment plan which requires additionally the payment of carrying charges, the fact that carrying charges are to be added to the advertised price must be disclosed.

(d) If an interest rate is quoted, it must be simple interest per annum calculated on the basis of the unpaid balance due as reduced after crediting installments as paid. [Guide 6]

§ 229.7 Guarantees.

A guarantee shall not be used in such a manner as to constitute a misrepresentation of a material fact. For example, "guaranteed fallout proof" is a representation that complete protection against fallout is afforded under all conditions. This would constitute a misrepresentation of a material fact, contrary to the provisions of § 229.1 of this part.

NOTE: The Guides Against Deceptive Advertising of Guarantees furnish guidance respecting other guarantee representations and are to be considered as supplementing this section.

[Guide 7]

§ 229.8 Government connection, approval or endorsement.

If a shelter design meets the minimum requirements of the Office of Civil Defense, the advertiser may reveal this fact in advertising. Even though the shelter design meets the aforementioned requirements, however, an advertiser shall not represent that the shelter has been approved or endorsed by the Government or is being offered by an agency of the Government. Thus, the use of seals, insignia, trade or brand names, or any other term or symbol implying Government connection, approval, or en-

dorsement shall not be used in advertising. [Guide 8]

§ 229.9 Maintenance or repairs.

No statement shall be made which misrepresents the extent to which maintenance, repairs or replacement of a shelter or parts thereof may be required. [Guide 9]

§ 229.10 "Custom made," "custom built," etc.

Claims that a shelter is "custom made," "custom built," or representations of similar import, shall not be used unless the shelter is to be designed and built specially for the particular purchaser. [Guide 10]

§ 229.11 Model shelters.

An advertiser shall not claim that prospective purchasers' homes have been selected for the installation of "model shelters," or that the owners thereof will receive any amount of money, a reduction in price or other thing of value conditioned upon the sale to others of similar shelters, when such is not the fact. [Guide 11]

§ 229.12 Combination or dual-purpose shelters.

Claims to the effect that a shelter serves a combination or dual purpose shall not be used unless factually true. If a shelter can in fact be utilized for other purposes which would not interfere with its use as a shelter, factual and nondeceptive representations as to such other utilization may be made. [Guide 12]

§ 229.13 Bait advertising.

An advertiser shall not offer a shelter for sale unless such offer is made in good faith for the purpose of selling the advertised shelter. Insincere offers to sell, made for the purpose of contacting prospective purchasers and switching them to a shelter other than the shelter advertised, are not to be used. [Guide 13]

§ 229.14 Lottery schemes.

Sales promotional plans involving lottery shall not be used. [Guide 14]

§ 229.15 Scare tactics.

Scare tactics, such as the employment of horror pictures calculated to arouse unduly the emotions of prospective shelter buyers, shall not be used. [Guide 15]

PART 230—GUIDES FOR ADVERTISING SHELL HOMES

Sec.

- 230.1 Extent of completion.
- 230.2 Size or dimensions.
- 230.3 Pictorial representations.
- 230.4 Savings.
- 230.5 Financial terms.
- 230.6 Bait advertising.
- 230.7 Guarantees.
- 230.8 Model homes.
- 230.9 Delivery and installation.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15531, Nov. 8, 1967, unless otherwise noted.

§ 230.1 Extent of completion.

(a) Since the typical shell home does not include such features as wiring, plumbing, heating, interior trim and finish, or other requisite components, an advertiser may not represent that the home is finished or completed to any degree inconsistent with the facts.

(b) For example, an advertiser may not claim that the home in its unfinished state is habitable, or that it has appliances, fixtures, equipment, material or services which are not actually included at the time it is accepted by the purchaser.

(c) In every case the advertiser must clearly and conspicuously disclose it is a shell home. [Guide 1]

§ 230.2 Size or dimensions.

(a) An advertiser shall not misrepresent, pictorially or through any other means, the overall size or dimension of the home or the rooms or space therein.

(b) This section prohibits misrepresentation through the use of picturizations, as well as the publication of figures which exaggerate the size or dimension. [Guide 2]

§ 230.3 Pictorial representations.

(a) All construction items featured in a pictorial representation, such as a porch, carport, chimney, steps, etc., must be included in the price quoted in the advertisement.

(b) An advertisement shall not feature the picture of a higher-priced home in conjunction with the price of a lower-priced home, thus leading prospective purchasers to believe the higher-priced home can be purchased at the lower price.

(c) If the price of any home other than the one pictured in the advertisement is quoted, the price of the pictured home must be disclosed and quoted with equal size and conspicuousness. [Guide 3]

§ 230.4 Savings.

(a) If savings claims are made (1) the basis for the comparison must be clearly disclosed, (2) the savings must be factually true, and (3) the advertiser must clearly disclose: (i) That the buyer must furnish the remaining material and (ii) that the saving, if any, is based upon the buyer completing the remainder of the work.

(b) For example, if the advertiser has a factually true savings claim to make in comparison either with a project type or custom-built home, he must disclose the type of home with which the comparison is being made.

(c) In determining whether the savings claim is factually true, the comparison must be based upon a home of like quality, material, size, design and workmanship in the same general locality where the shell home is to be built.

(d) If savings claims other than those outlined in paragraphs (a), (b), and (c) of this section, are utilized, the claim must meet the applicable provisions of the Commission's Guides Against Deceptive Pricing. [Guide 4]

§ 230.5 Financial terms.

(a) Installment purchase plans shall not be misrepresented in any manner. This section prohibits claims to the effect that loans are available from any particular lending institution or through a particular lending program, or that loans are federally insured, or

that the seller will finance the purchaser's indebtedness, unless such is the fact.

(b) Down payments shall not be quoted in such a manner as to imply that the down payment constitutes the entire price.

(c) Claims such as "No Money Down" shall not be used unless factually true. Moreover, where such claims are predicated on the existence of other material conditions, such as the possession of a lot free and clear of encumbrances equal in value to 5 percent of the cost of the shell home, such condition or conditions must be clearly and conspicuously disclosed in the advertising.

(d) If a home is advertised at a quoted price under an installment plan which requires additionally the payment of interest, carrying charges, down payment, or premiums for credit life insurance, the fact that such costs are to be added to the advertised price must be clearly disclosed. If monthly payments are quoted, the duration of the payments must be disclosed. Additionally, if terminal payments significantly larger than the advertised monthly payments are required, this fact must also be clearly disclosed as well as the amount thereof.

(e) A seller shall not procure the signature of purchasers on negotiable promissory notes without revealing to such purchasers they are signing a negotiable promissory note which may be discounted and also revealing the amount, terms, and conditions of such instrument.

(f) If an interest rate is quoted in advertising, it must be simple interest per annum calculated on the basis of the unpaid balance due as reduced after crediting installments as paid. [Guide 5]

§ 230.6 Bait advertising.

(a) An advertiser shall not offer a home for sale unless such offer is made in good faith for the purpose of selling the advertised home. Insincere offers to sell, made for the purpose of contacting prospective purchasers and switching them to a home other than the home advertised, shall not be used.

(b) Even though the true facts are subsequently made known to the

buyer, the law is violated if the first contact or interview is secured by deception.

NOTE: The Guides Against Bait Advertising furnish specific guidance in regard to bait practices and are to be considered as supplementing this section.

[Guide 6]

§ 230.7 Guarantees.

In general, any guarantee in advertising shall clearly and conspicuously disclose:

(a) The nature and extent of the guarantee. This includes disclosure of:

(1) What product or part of the product is guaranteed,

(2) What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee,

(3) What is the duration of the guarantee,

(4) What, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

(b) The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement or refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and

(c) The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the builder is the guarantor.

NOTE: The Guides Against Deceptive Advertising of Guarantees furnish guidance respecting other guarantee representations and are to be considered as supplementing this section.

[Guide 7]

§ 230.8 Model homes.

An advertiser shall not claim that a prospective buyer has been "selected"

or that his home will be used as a "model" or "demonstration," or that the owner thereof will receive any amount of money, a reduction in price or other thing of value conditioned upon the sale of similar homes to others, unless such representation is factually true. [Guide 8]

§ 230.9 Delivery and installation.

(a) Advertised or quoted prices shall include all charges for delivery and installation of the home, unless the advertisement clearly and conspicuously discloses that delivery or installation charges are not included.

(b) Representations that a home will be delivered or installed within a specified period of time shall not be used unless factually true. [Guide 9]

PART 231—GUIDES FOR SHOE CONTENT LABELING AND ADVERTISING

Subpart A—Labeling

Sec.

- 231.1 Labeling in general.
- 231.2 Simulated or imitation leather.
- 231.3 Concealed innersoles.
- 231.4 Split leather.
- 231.5 Embossed or processed leather.
- 231.6 Ground or shredded leather.

Subpart B—Advertising

231.7 Disclosures in advertising.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15532, Nov. 8, 1967, unless otherwise noted.

Subpart A—Labeling

§ 231.1 Labeling in general.

(a) (1) The term "leather" and other terms suggestive of leather may be unqualifiedly used in the labeling of shoes and slippers only when the shoes or slippers are composed in all substantial parts of top grain leather, exclusive of heels, stiffenings and ornamentation.

(2) If a shoe or slipper is composed in substantial part of leather, such terms may be used if immediately qualified to show clearly what part or parts are of leather, provided the other requirements of this part are

met and provided further that no reference to leather content shall be so emphasized as to exaggerate or otherwise deceptively represent the quantity, quality or extent of leather present.

(3) The unqualified term "leather" and other terms suggestive of leather may not be used to describe shoes and slippers or parts thereof made from split leather or from ground, pulverized or shredded leather. The term may be used if qualified so as to provide an accurate, nondeceptive description of the split leather or the ground, pulverized or shredded leather content.

(b) In the labeling of shoes and slippers, no trade name, coined name, trade-mark, depiction, symbol, or other words or terms may be used, which would tend to convey the impression that the shoes or slippers are made of a certain kind or type of material when they are not.

(c) Examples of words and terms prohibited by this section, when applied to nonleather material are:

"Duraleather."

"Barkhyde."

(d) All labeling disclosures required by this Subpart A must be in the form of stamps, tags or labels imbedded in or attached to the product itself and so affixed as to remain thereon until completion of the sale to the retail customer. The disclosures required need not be in a single location or on the same stamp, tag or label, but they must all be easily and readily observed and understood upon casual inspection of the shoes or slippers. [Guide 1]

§ 231.2 Simulated or imitation leather.

Shoes or slippers composed either wholly, or in any part other than heels, of visible, or partly visible, nonleather material having the appearance of leather, or split leather, must bear labeling which clearly identifies the part or parts so composed and which clearly discloses either:

(a) The material is simulated or imitation leather, or

(b) The general nature of the material in such manner as will show it is not leather or split leather.

(c) Examples of disclosures which will meet the requirements of this section, when justified by the facts, are:

"Outersole, innersole and linings composed of imitation leather," or "imitation leather shoeboard."

"Midsoles composed of cellulose fibres," or "cellulose fibre shoeboard."

"Sock lining, quarter lining and heel pad are imitation leather made from ground leather fibres."

"Vinyl linings."

(d) A disclosure that will not meet the requirements of this section is:

"Shoeboard innersole."

[Guide 2]

§ 231.3 Concealed innersoles.

(a) Shoes or slippers containing innersoles of nonleather material which are concealed from view, but which also contain other visible parts of leather, must bear a label clearly disclosing the presence of the nonleather innersole.

(b) Examples of disclosures which will meet the requirements of this section are:

"Innersole of nonleather shoeboard."

"Innersole of cellulose fibre" or "cellulose fibre shoeboard."

"Innersole of rubberized felt."

(c) A disclosure which will not meet the requirements of this section is:

"Shoeboard Innersole."

[Guide 3]

§ 231.4 Split leather.

(a) Shoes or slippers composed either wholly or in part of visible split leather which simulates top grain leather must bear a label clearly disclosing the material is split leather and clearly identifying the part or parts to which the disclosure applies. (Leather made from portions of hides or skins which have been split into two or more thicknesses, other than the grain or hair side, shall be considered split leather.)

(b) Example of disclosures which will meet the requirement of this section is:

"Upper composed of split cowhide."

[Guide 4]

§ 231.5 Embossed or processed leather.

(a) Shoes or slippers composed either wholly or in part of visible leather which has been embossed, dyed, or otherwise processed, so as to simulate the appearance of a different kind or type of leather, must bear a label clearly disclosing the kind or type of leather of which they are actually made.

(b) If representations as to the leather appearance of the shoes or slippers are made, the label must reveal the simulated or imitation nature of the visible surface, and the disclosure as to the true composition of the material must be set forth in immediate conjunction with such representations.

Example. "Simulated alligator made of split cowhide."

[Guide 5]

§ 231.6 Ground or shredded leather.

Shoes or slippers, composed either wholly or in part of visible ground, pulverized or shredded leather that has the appearance of being leather must bear a label clearly identifying the part or parts involved and clearly disclosing either:

(a) The material is simulated or imitation leather, or

(b) The material is of ground, pulverized or shredded leather. [Guide 6]

Subpart B—Advertising

§ 231.7 Disclosures in advertising.

(a) Whenever a shoe or slipper is visually depicted in advertising, including catalogs, with sufficient clarity so that the picturization itself would have a tendency to create the impression that pictorially visible nonleather parts exclusive of heels are composed of leather or split leather or that pictorially visible leather parts exclusive of heels are composed of a different kind or type of leather than is the case, the advertising must contain a statement clearly and conspicuously disclosing either:

(1) The visible part or parts are simulated or imitation leather, or

(2) The general nature of the visible part or parts in such manner as will

show they are not leather or not the type of leather depicted.

Example. An advertisement contains a picture of a shoe in sufficient detail as to lead a casual reader to expect the upper and linings were composed of leather. This advertisement must disclose the true composition of these parts or disclose that they are imitation leather.

(b) The term "leather" and other terms suggestive of leather may be unqualifiedly used in advertising of shoes and slippers only when the shoes or slippers are composed in all substantial parts of top grain leather, exclusive of heels, stiffenings and ornamentation.

(1) If a shoe or slipper is composed in substantial part of leather, such terms may be used in advertising if immediately qualified to show clearly what part or parts are of leather, provided no reference to leather content shall be so emphasized as to exaggerate or otherwise deceptively represent the quantity, quality or extent of leather present.

(2) The unqualified term "leather" and other terms suggestive of leather may not be used to describe shoes and slippers or parts thereof made from split leather or from ground, pulverized or shredded leather. The term may be used if qualified so as to provide an accurate, nondeceptive description of the split leather or the ground, pulverized or shredded leather content.

(3) Terms suggestive of leather may be used to describe the appearance of a nonleather material which has the appearance of leather if immediately accompanied by a disclosure that the term refers only to the appearance and that the material is not leather.

Example. "Imitation Alligator."

(c) In the advertising of shoes and slippers, no trade name, coined name, trade-mark, depiction, symbol, or other words or terms may be used which would tend to convey the impression that the shoes or slippers advertised are made of a certain kind or type of material when they are not.

(d) Examples of words and terms prohibited by this section, when applied to nonleather material are:

"Durable leather."

"Barkhyde."

[Guide 7]

PART 232—GUIDES FOR ADVERTISING RADIATION MONITORING INSTRUMENTS

Sec.

232.0 Application.

232.0-1 Explanation of terms.

232.1 Products adequate for home civil defense use.

232.2 Products of limited home civil defense use—affirmative disclosures of limitations.

232.3 Representations for toys, novelties, etc.

232.4 Representations for professional monitoring instruments.

232.5 Representations requiring qualifications.

232.6 Government approval or endorsement.

232.7 Performance claims and other representations.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15533, Nov. 8, 1967, unless otherwise noted.

§ 232.0 Application.

This part is applicable to the advertising of instrument devices or other products which are represented in any manner to be of use to the general public for detecting or measuring fallout radiation. All forms of advertising, labeling and other promotional material, however, disseminated, are within the scope of this part.

§ 232.0-1 Explanation of terms.

As used in this part:

(a) "Gamma radiation" refers to the high energy radiation which would be given off by radioactive fallout particles and would present the major radiation hazard for the first few weeks after a nuclear attack;

(b) "Roentgen" refers to the standard unit of measure for the amount (dose) of gamma radiation exposure;

(c) "Dosimeter" refers to an instrument or device designed to measure the accumulated amount (total dose) of gamma radiation to which an individual or area has been exposed during the period of measurement;

(d) "Rate meter" refers to an instrument or device designed to measure the intensity (dose rate) of gamma radiation existing at the time and place of measurement;

(e) "Official Federal Emergency Management Agency (FEMA) Criteria" refers to the "Criteria for Radiation Instruments for Use by the General Public" as published by the Federal Emergency Management Agency, Washington, DC 20472.

[32 FR 15533, Nov. 8, 1967, as amended at 48 FR 11104, Mar. 16, 1983]

§ 232.1 Products adequate for home civil defense use.

(a) A product should not be represented, directly or by implication, as providing an adequate means whereby families or individual users may detect or measure radiation resulting from a nuclear attack, unless the product meets the Official FEMA Criteria in all material respects.

(b) The following are some examples of products which would fail, in material respects, to meet the Official FEMA Criteria:

Example 1. A rate meter which will not measure (indicate quantitatively) gamma radiation dose rates from 1 to at least 100 roentgens per hour and give positive indication when the dose rate is between 100 roentgens per hour and 1,000 roentgens per hour;

Example 2. A dosimeter which will not measure (indicate quantitatively) accumulated doses of gamma radiation:

a. From zero to at least 600 roentgens, or
b. From zero to at least 200 roentgens (when provision is made for resetting the instrument's indicator back to zero to permit further use);

Example 3. A rate meter which will not provide a measure of gamma radiation within an over-all accuracy of plus or minus 35 percent of the true gamma radiation intensity (dose rate);

Example 4. A dosimeter which will not measure gamma radiation within an over-all accuracy of plus or minus 25 percent of the true accumulated amount (total dose) of gamma radiation;

¹ Copies of the "Criteria for Radiation Instruments for Use by the General Public" are available upon request from the Federal Emergency Management Agency, Washington, DC 20472.

Example 5. An instrument, the operation of which would be materially affected by temperature changes, habitable altitudes, high humidity and other climatic and weather conditions, or by prolonged periods of storage;

Example 6. An instrument or device which would require the user to evaluate the radiation dose or dose rate by nothing more than his interpretation of variations in tone, brightness, loudness, color or photographic densities.

[Guide I]

[32 FR 15533, Nov. 8, 1967, as amended at 48 FR 11104, Mar. 16, 1983]

§ 232.2 Products of limited home civil defense use—affirmative disclosures of limitations.

A product which does not meet the official FEMA criteria in all material respects, but which would be of some significant use in detecting and measuring fallout radiation, should not be represented, directly or by implication, as providing any means whereby members of the general public could detect or measure radiation resulting from a nuclear attack, unless all advertising, labeling and promotional material used therefor clearly and conspicuously disclose all material respects in which the product fails to meet the official FEMA criteria. [Guide II]

[32 FR 15533, Nov. 8, 1967, as amended at 48 FR 11104, Mar. 16, 1983]

§ 232.3 Representations for toys, novelties, etc.

Products which cannot be relied on to serve a significant purpose in detecting and measuring radiation after a nuclear attack, should not be advertised or labeled in any manner which would convey the impression that the product would fulfill any such home civil defense need. [Guide III]

§ 232.4 Representations for professional monitoring instruments.

Professional, industrial, laboratory and other types of products designed for specialized radiation monitoring, but which would not be of practical use for some significant home civil defense need, should not be represented in any manner that would convey the impression that the product would be

useful for home civil defense purposes. [Guide IV]

§ 232.5 Representations requiring qualifications.

(a) Representations which are susceptible of more than one interpretation, one or more of which would be misleading, should be qualified to remove the deceptive implications.

Example 1. Claims implying that radiation monitoring instruments provide "protection" from fallout radiation are misleading because such instruments only detect and measure radiation. Shelter is required for protection against radiation hazards. Therefore, any statement implying that monitoring instruments afford protection, such as, "Help Protect the Family," should be properly qualified.

Example 2. Such representations as "Detect and Measure Radiation" should be qualified so as to make it clear that the advertised product would be adequate for measuring only dose rates or only total doses of gamma radiation, as the case may be, unless the product adequately provides for making both types of measurements.

(b) Representations which cannot be qualified without the qualification amounting to a contradiction should not be used.

Example 1. Representations such as "100 percent Accurate" and "Fully Accurate," or any other expressions implying that an instrument would be completely accurate under all possible conditions of use, should not be used unless true in fact, because any qualification would amount to a contradiction.

Example 2. If a product does not include an adequate dosimeter and an adequate rate meter it should not be represented as a "Complete Family Kit," because any qualification of that claim, or one of similar meaning, would necessarily contradict the implication that a family would need nothing more than the kit to satisfy its basic radiation monitoring needs.

(c) Qualifications or disclosures should be made clearly and conspicuously in close conjunction with any representation which makes the qualification or disclosure necessary, and should have sufficient prominence to be observed by casual readers. Qualifications and disclosures should not be deceptively deemphasized through use of small print, asterisks, footnotes or by any other means. [Guide V]

§ 232.6 Government approval or endorsement.

If a product meets the official FEMA criteria, the advertiser may reveal this fact in advertising. However, even though the product meets such criteria, an advertiser should not represent in any manner that the product is being offered by, or has been approved, accepted, recommended or otherwise endorsed by the Government or any agency thereof. Thus, representations, pictures, seals, insignia, trade or brand names, or any other term or symbol which would imply any Government connection, approval or any other form of governmental endorsement, should not be used. [Guide VI]

[32 FR 15533, Nov. 3, 1967, as amended at 48 FR 11104, Mar. 16, 1983]

§ 232.7 Performance claims and other representations.

No representation should be made, in any manner, which would mislead prospective purchasers concerning:

(a) A product's manner of performance, capabilities, reliability, utility, durability, or shock-resistant or moisture-resistant properties; or

(b) The ease or simplicity with which a product may be operated, interpreted, calibrated, tested, repaired or maintained. [Guide VII]

NOTE: The Federal Trade Commission's Guides Against Deceptive Pricing and Guides Against Deceptive Advertising of Guarantees furnish guidance respecting price and guarantee representations.

PART 233—GUIDES AGAINST DECEPTIVE PRICING

Sec.

233.1 Former price comparisons.

233.2 Retail price comparisons; comparable value comparisons.

233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).

233.4 Bargain offers based upon the purchase of other merchandise.

233.5 Miscellaneous price comparisons.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15534, Nov. 8, 1967, unless otherwise noted.

§ 233.1 Former price comparisons.

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time. It provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller's regular price.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith—and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, “Formerly sold at \$——”), unless substantial sales at that price were actually made.

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual “bargain”, Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care,

for he maintains that price for only a few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” This is obviously a false claim. The advertised “bargain” is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he never offered the article at all; he might feature a price which was not used in the regular course of business, or which was not used in the recent past but at some remote period in the past, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was not maintained for a reasonable length of time, but was immediately reduced.

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,” the advertiser must take care that the amount of reduction is not so insignificant as to be meaningless. It should be sufficiently large that the consumer, if he knew what it was, would believe that a genuine bargain or saving was being offered. An advertiser who claims that an item has been “Reduced to \$9.99,” when the former price was \$10, is misleading the consumer, who will understand the claim to mean that a much greater, and not merely nominal, reduction was being offered. [Guide I]

§ 233.2 Retail price comparisons; comparable value comparisons.

(a) Another commonly used form of bargain advertising is to offer goods at prices lower than those being charged by others for the same merchandise in the advertiser's trade area (the area in which he does business). This may be done either on a temporary or a permanent basis, but in either case the advertised higher price must be based upon fact, and not be fictitious or mis-

leading. Whenever an advertiser represents that he is selling below the prices being charged in his area for a particular article, he should be reasonably certain that the higher price he advertises does not appreciably exceed the price at which substantial sales of the article are being made in the area—that is, a sufficient number of sales so that a consumer would consider a reduction from the price to represent a genuine bargain or saving. Expressed another way, if a number of the principal retail outlets in the area are regularly selling Brand X fountain pens at \$10, it is not dishonest for retailer Doe to advertise: "Brand X Pens, Price Elsewhere \$10, Our Price \$7.50".

(b) The following example, however, illustrates a misleading use of this advertising technique. Retailer Doe advertises Brand X pens as having a "Retail Value \$15.00, My Price \$7.50," when the fact is that only a few small suburban outlets in the area charge \$15. All of the larger outlets located in and around the main shopping areas charge \$7.50, or slightly more or less. The advertisement here would be deceptive, since the price charged by the small suburban outlets would have no real significance to Doe's customers, to whom the advertisement of "Retail Value \$15.00" would suggest a prevailing, and not merely an isolated and unrepresentative, price in the area in which they shop.

(c) A closely related form of bargain advertising is to offer a reduction from the prices being charged either by the advertiser or by others in the advertiser's trade area for other merchandise of like grade and quality—in other words, comparable or competing merchandise—to that being advertised. Such advertising can serve a useful and legitimate purpose when it is made clear to the consumer that a comparison is being made with other merchandise and the other merchandise is, in fact, of essentially similar quality and obtainable in the area. The advertiser should, however, be reasonably certain, just as in the case of comparisons involving the same merchandise, that the price advertised as being the price of comparable merchandise does not exceed the price at

which such merchandise is being offered by representative retail outlets in the area. For example, retailer Doe advertises Brand X pen as having "Comparable Value \$15.00". Unless a reasonable number of the principal outlets in the area are offering Brand Y, an essentially similar pen, for that price, this advertisement would be deceptive. [Guide II]

§ 233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).

(a) Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.

(b) There are many methods by which manufacturers' suggested retail or list prices are advertised: Large scale (often nationwide) mass-media advertising by the manufacturer himself; preticketing by the manufacturer; direct mail advertising; distribution of promotional material or price lists designed for display to the public. The mechanics used are not of the essence. This part is concerned with any means employed for placing such prices before the consuming public.

(c) There would be little problem of deception in this area if all products were invariably sold at the retail price set by the manufacturer. However, the widespread failure to observe manufacturers' suggested or list prices, and the advent of retail discounting on a wide scale, have seriously undermined the dependability of list prices as indicators of the exact prices at which articles are in fact generally sold at retail. Changing competitive conditions have created a more acute problem of deception than may have existed previously. Today, only in the rare case are all sales of an article at the

manufacturer's suggested retail or list price.

(d) But this does not mean that all list prices are fictitious and all offers of reductions from list, therefore, deceptive. Typically, a list price is a price at which articles are sold, if not everywhere, then at least in the principal retail outlets which do not conduct their business on a discount basis. It will not be deemed fictitious if it is the price at which substantial (that is, not isolated or insignificant) sales are made in the advertiser's trade area (the area in which he does business). Conversely, if the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.

(e) This general principle applies whether the advertiser is a national or regional manufacturer (or other non-retail distributor), a mail-order or catalog distributor who deals directly with the consuming public, or a local retailer. But certain differences in the responsibility of these various types of businessmen should be noted. A retailer competing in a local area has at least a general knowledge of the prices being charged in his area. Therefore, before advertising a manufacturer's list price as a basis for comparison with his own lower price, the retailer should ascertain whether the list price is in fact the price regularly charged by principal outlets in his area.

(f) In other words, a retailer who advertises a manufacturer's or distributor's suggested retail price should be careful to avoid creating a false impression that he is offering a reduction from the price at which the product is generally sold in his trade area. If a number of the principal retail outlets in the area are regularly engaged in making sales at the manufacturer's suggested price, that price may be used in advertising by one who is selling at a lower price. If, however, the list price is being followed only by, for example, small suburban stores, house-to-house canvassers, and credit houses, accounting for only an insubstantial volume of sales in the area,

advertising of the list price would be deceptive.

(g) On the other hand, a manufacturer or other distributor who does business on a large regional or national scale cannot be required to police or investigate in detail the prevailing prices of his articles throughout so large a trade area. If he advertises or disseminates a list or preticketed price in good faith (i.e., as an honest estimate of the actual retail price) which does not appreciably exceed the highest price at which substantial sales are made in his trade area, he will not be chargeable with having engaged in a deceptive practice. Consider the following example:

(h) Manufacturer Roe, who makes Brand X pens and sells them throughout the United States, advertises his pen in a national magazine as having a "Suggested Retail Price \$10," a price determined on the basis of a market survey. In a substantial number of representative communities, the principal retail outlets are selling the product at this price in the regular course of business and in substantial volume. Roe would not be considered to have advertised a fictitious "suggested retail price." If retailer Doe does business in one of these communities, he would not be guilty of a deceptive practice by advertising, "Brand X Pens, Manufacturer's Suggested Retail Price, \$10, Our Price, \$7.50."

(i) It bears repeating that the manufacturer, distributor or retailer must in every case act honestly and in good faith in advertising a list price, and not with the intention of establishing a basis, or creating an instrumentality, for a deceptive comparison in any local or other trade area. For instance, a manufacturer may not affix price tickets containing inflated prices as an accommodation to particular retailers who intend to use such prices as the basis for advertising fictitious price reductions. [Guide III]

§ 233.4 Bargain offers based upon the purchase of other merchandise.

(a) Frequently, advertisers choose to offer bargains in the form of additional merchandise to be given a customer on the condition that he purchase a

particular article at the price usually offered by the advertiser. The forms which such offers may take are numerous and varied, yet all have essentially the same purpose and effect. Representative of the language frequently employed in such offers are "Free," "Buy One—Get One Free," "2-For-1 Sale," "Half Price Sale," "1¢ Sale," "50% Off," etc. Literally, of course, the seller is not offering anything "free" (i.e., an unconditional gift), or ½ free, or for only 1¢, when he makes such an offer, since the purchaser is required to purchase an article in order to receive the "free" or "1¢" item. It is important, therefore, that where such a form of offer is used, care be taken not to mislead the consumer.

(b) Where the seller, in making such an offer, increases his regular price of the article required to be bought, or decreases the quantity and quality of that article, or otherwise attaches strings (other than the basic condition that the article be purchased in order for the purchaser to be entitled to the "free" or "1¢" additional merchandise) to the offer, the consumer may be deceived.

(c) Accordingly, whenever a "free," "2-for-1," "half price sale," "1¢ sale," "50% off" or similar type of offer is made, all the terms and conditions of the offer should be made clear at the outset. [Guide IV]

§ 233.5 Miscellaneous price comparisons.

The practices covered in the provisions set forth above represent the most frequently employed forms of bargain advertising. However, there are many variations which appear from time to time and which are, in the main, controlled by the same general principles. For example, retailers should not advertise a retail price as a "wholesale" price. They should not represent that they are selling at "factory" prices when they are not selling at the prices paid by those purchasing directly from the manufacturer. They should not offer seconds or imperfect or irregular merchandise at a reduced price without disclosing that the higher comparative price refers to the price of the merchandise if perfect. They should not offer an advance sale

under circumstances where they do not in good faith expect to increase the price at a later date, or make a "limited" offer which, in fact, is not limited. In all of these situations, as well as in others too numerous to mention, advertisers should make certain that the bargain offer is genuine and truthful. Doing so will serve their own interest as well as that of the public. [Guide V]

PART 234—GUIDES FOR THE MAIL ORDER INSURANCE INDUSTRY

Sec.

- 234.0 Definitions.
- 234.1 Deception (general).
- 234.2 Advertisement of benefits, losses covered or premiums payable.
- 234.3 Health of the applicant or insured.
- 234.4 Disclosure of policy provisions relating to renewability, cancellability, or termination.
- 234.5 Testimonials, appraisals or analyses.
- 234.6 Deceptive use of statistics.
- 234.7 Identification of plan or number of policies.
- 234.8 Deception as to introductory, initial or special offers.
- 234.9 Misrepresentation as to licensing, approval or endorsement of insurer, policy or advertisement.
- 234.10 Deception as to "group" or "quasi-group" policies.
- 234.11 Allocation of benefits under a "Family Group" policy.
- 234.12 Deceptive use of trade names, service marks, etc.
- 234.13 Disparagement.
- 234.14 Misrepresentation concerning the insurer.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15536, Nov. 8, 1967, unless otherwise noted.

§ 234.0 Definitions.

(a) "Advertisement" for the purpose of this part, shall mean any of the following material when used in connection with solicitation of the original purchase of a policy, or renewal or reinstatement thereof:

(1) Any printed or published material, descriptive literature, statements or depictions of an insurer used in newspapers, magazines, radio and TV scripts or presentations, billboards, and similar displays, and

(2) Descriptive literature and sales aids of all kinds issued or caused to be issued by an insurer or by an insurer's agent or broker for presentation to members of the public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters, and policy forms.

(b) "Policy" for the purpose of this part, shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides insurance benefits for any kind of loss or expense.

(c) "Insurer" for the purpose of this part, shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, and any other legal entity, engaged in the advertisement and sale of a policy as herein defined.

§ 234.1 Deception (general).

No advertisement shall be used which because of words, phrases, statements or illustrations therein or information omitted therefrom has the capacity and tendency to mislead or deceive purchasers or prospective purchasers, irrespective of whether a policy advertised is made available to an insured prior to the consummation of the sale, or an offer is made of a premium refund if a purchaser is not satisfied. Words or phrases which are misleading or deceptive because the meaning thereof is not clear, or is clear only to persons familiar with insurance terminology, shall not be used. [Guide 1]

§ 234.2 Advertisement of benefits, losses covered or premiums payable

(a) *Disclosure as to exceptions, reductions and limitations.* (1) No advertisement shall refer to any loss covered or benefit provided by an insurance policy, period of time for which any benefit is payable, or the cost of a policy, without clearly and conspicuously disclosing in close conjunction therewith such exceptions, reductions and limitations relating thereto as will fully relieve the advertisement of all capacity to deceive.

(2) The disclosure requirements of this section are not applicable to advertisements which mention only the

general kind of insurance (e.g., "Life," "Accident," "Hospitalization"), give no information as to losses covered, benefits or premiums, and serve the purpose of merely inviting inquiries or a show of interest on the part of the recipients.

(3) As used in this section:

(i) The term "exception" means any provision in a policy whereby coverage for a specified hazard is entirely eliminated. It is a statement of risk not assumed under the policy.

(ii) The term "reduction" shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction clause not been used.

(iii) The term "limitation" means any provision which restricts the duration or extent of coverage, losses covered, or benefits payable under the policy other than an exception or a reduction.

(4) *Waiting, elimination, probationary or similar periods.* When there is a time period between the effective date of a policy and the effective date of coverage under the policy, or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, such fact must be clearly and conspicuously disclosed in close conjunction with any reference to such coverage or benefits made in any advertisement.

(5) *Benefits contingent on conditions.* When a policy pays varying amounts of benefits for the same loss occurring under different conditions or which pays benefits only when a loss occurs under certain conditions, any reference to such benefits in an advertisement must be closely accompanied by clear and conspicuous disclosure of such different or limited conditions as are applicable.

(6) *Preexisting conditions.* If a policy provides any limitations on the coverage of a loss if the cause of such loss is traceable to a condition existing prior to the effective date of the policy, or prior to any other particular time, any reference to the policy coverage of the loss made in any advertisement must be closely accompanied

by clear and conspicuous disclosure of such limitations. (See also § 234.3 of this part.)

(7) *Deceptive words or phrases.* (i) No words, terms or phrases shall be used as descriptive of the coverage provided by a policy which misrepresent the extent of such coverage. Words such as "all," "full," "complete," "unlimited," and words of similar import must not be used to refer to any coverage which under the terms of the policy is subject to exceptions, reductions or limitations. Other words, terms, or phrases representing or implying broad insurance coverage must not be used as descriptive of losses covered or benefits provided by a policy which are subject to exceptions, reductions or limitations without disclosure of the applicable exceptions, reductions or limitations as required by paragraph (a) of this section.

(ii) The terms "hospitalization," "accident," or "life" must not be used as descriptive of an insurance policy which provides benefits for only unusual or unique sicknesses, accidents, or causes of death unless in close conjunction with such terms clear and conspicuous disclosure is made of such coverage (e.g., "Leukemia Hospitalization," "Death by Drowning").

(iii) Words or phrases such as "up to," "as high as," etc. shall not be used as descriptive of the dollar amount payable for any kind of represented losses or expenses unless the policy provides benefit payments up to such amount in all cases for such losses or expenses actually sustained by a policyholder, or there is full and conspicuous disclosure in close conjunction with such words or phrases of either—

(a) The complete schedule of payments provided by the policy, or

(b) The specific loss or expense for which the represented dollar amount is provided by the policy; and also disclosure that benefits provided by the policy for losses or expenses of the kind represented vary in amount depending on the particular kind of loss or expense incurred, if such is the case, as for example—"Policy provides surgical benefits which vary in amount depending on kind of operation performed. For example, pays up

to \$150 for operation to remove a lung."

and there is also disclosure of such other exceptions, reductions or limitations as required by paragraph (a) of this section.

(iv) An advertisement must not contain representations such as "This policy pays \$1,800 for hospital room and board expenses" without clear and conspicuous disclosure in close conjunction therewith of the maximum daily benefit and the maximum time limit for such hospital room and board expense.

(v) An advertisement must not represent the weekly, monthly, or other periodic benefits payable under a policy without clearly and conspicuously disclosing in close conjunction with such representation the limitation of time over which such benefits will be paid or of the number of payments or total amount thereof which will be made if, by the terms of the policy, payment of benefits for any loss or aggregate of losses is limited to time, number, or total amount.

(8) *Age limitation.* Any reference in an advertisement to any insurance coverage or benefits which by the terms of the policy are limited to a certain age group must be closely accompanied by clear and conspicuous disclosure of such fact.

(b) *Deception as to coverage and additional benefits.* (1) A policy covering only one disease or certain specified diseases must not be advertised in such manner as to imply coverage beyond the terms of the policy, either by use of synonymous words or terms to refer to any disease or physical conditions so as to imply broader coverage, or by other means.

(2) An advertisement must not represent, directly or indirectly, that a policy provides for the payment of certain benefits in addition to other benefits when such is not the fact. [Guide 2]

§ 234.3 Health of the applicant or insured.

No advertisement shall be used which represents or implies—

(a) That the condition of the applicant's or insured's health prior to, or at the time of issuance of a policy, or

thereafter, will not be considered by the insurer in determining its liability or benefits to be furnished for or in the settlement of a claim when such is not the fact (see also § 234.2(a)(6) of this part); or

(b) That no medical examination is required if the furnishing of benefits by an insurer under a policy so represented is or may be contingent on a medical examination under any condition; or

(c) That no medical examination is required, even though such is the case, without conspicuously disclosing in close conjunction therewith all the conditions pertaining to or involving the insured's health under which the insurer is not liable for the furnishing of benefits under a policy. [Guide 3]

§ 234.4 Disclosure of policy provisions relating to renewability, cancellability, or termination.

(a) No advertisement shall refer, directly or by implication, to renewability, cancellability, or termination of a policy or a policy benefit, or contain any statement or illustration of time or age in connection with any benefit payable, loss, eligibility of applicants, or continuation of a policy, unless in close conjunction with such reference, statement or illustration there is clear and conspicuous disclosure of the material provisions in the policy relating thereto.

(b) No advertisement shall represent or imply that an insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may not be renewed or may be canceled by the insurer, or terminated under any circumstances over which insured has no control, during the period of time represented. [Guide 4]

§ 234.5 Testimonials, appraisals or analyses.

No testimonial, appraisal or analysis shall be used in any advertisement which is not genuine, does not represent the current opinion of the author, does not accurately describe the facts, does not correctly reflect the present practices of an insurer, is not applicable to the policy of insurer ad-

vertised or is not accurately reproduced.

NOTE: An insurer makes as his own all statements contained in any testimonial which he uses in his advertisement, and the advertisement including such statements is subject to all of the provisions of this part.

[Guide 5]

§ 234.6 Deceptive use of statistics.

(a) No advertisement shall be used in which representations are made as to the time within which claims are paid, the dollar amounts of claims paid, the number of claims paid or the number of persons insured under a particular policy or otherwise, or which contains other statistical information relating to any insurer or policy, unless such advertisement accurately reflects all the relevant facts. The advertisement shall not imply that the statistics are derived from a policy advertised unless such is the fact.

(b) No advertisement shall be used which misrepresents that claim settlements by an insurer are liberal or generous beyond the terms of a policy. [Guide 6]

§ 234.7 Identification of plan or number of policies.

(a) No advertisement shall offer a choice of the amount of benefits without clearly and conspicuously disclosing that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of benefits.

(b) No advertisement shall refer to various benefits which may be contained in two or more policies, other than group master policies, without clearly and conspicuously disclosing that such benefits are provided only through a combination of such policies. [Guide 7]

§ 234.8 Deception as to introductory, initial or special offers.

No representation shall be made in an advertisement, directly or by implication, that a policy or combination of policies is an introductory, initial, special or limited offer and that applicants will receive advantages not available at a later date, unless such is the fact. [Guide 8]

§ 234.9 Misrepresentation as to licensing, approval or endorsement of insurer, policy or advertisement.

No advertisement shall represent directly or by implication—

(a) That an insurer, or any policy or advertisement thereof, has been licensed, approved, endorsed or recommended by any governmental agency or department, unless such is the fact;

(b) That an insurer, or a policy or an advertisement thereof, has been approved, endorsed or recommended by any individual, group of individuals, society, association, or other organization, unless such is the fact. [Guide 9]

§ 234.10 Deception as to "group" or "quasi-group" policies.

No advertisement shall represent, directly or indirectly, that prospective policyholders become group or quasi-group members and as such enjoy special rates or underwriting privileges ordinarily associated with group insurance as recognized in the industry, unless such is the fact. [Guide 10]

§ 234.11 Allocation of benefits under a "Family Group" policy.

No advertisement shall refer to a benefit payable under a "Family Group" policy when the full amount of such benefit is not payable upon the death or disability, etc. of only one member of the family unless clear and conspicuous disclosure of such fact is made in the advertisement. [Guide 11]

§ 234.12 Deceptive use of trade names, service marks, etc.

There shall not be used in an advertisement any trade name, service mark, slogan, symbol, or other device which has the capacity and tendency to mislead or deceive prospective purchasers as to the true identity of the insurer or its relation with public or private institutions. [Guide 12]

§ 234.13 Disparagement.

No advertisement shall be used which, directly or indirectly, falsely disparages competitors, their policies, services, or business methods. [Guide 13]

§ 234.14 Misrepresentation concerning the insurer.

No advertisement shall be used which, directly or by implication, has the capacity and tendency to mislead or deceive prospective purchasers with respect to an insurer's assets, corporate structure, financial standing, age, or relative position in the insurance business, or in any other material respect. [Guide 14]

PART 235—GUIDES AGAINST DECEPTIVE LABELING AND ADVERTISING OF ADHESIVE COMPOSITIONS

Sec.

- 235.1 Metal composition products.
- 235.2 Use of the term "solder" or "weld."
- 235.3 Use of the word "porcelain."
- 235.4 Epoxy adhesives.
- 235.5 Use of the word "rubber," etc.
- 235.6 Misrepresentation (general).
- 235.7 Guarantees, warranties, etc.
- 235.8 Placing deceptive material in the hands of others.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15538, Nov. 8, 1967, unless otherwise noted.

§ 235.1 Metal composition products.

Products which do not, after application, have the same physical and chemical properties of metal, or of a particular represented metal, shall not be represented as metal or as having the intrinsic characteristics of metal, or of the particular metal indicated. Thus, neither the term "metal" nor the terms "iron," "steel," "aluminum" or other names of metal shall be used to designate in brand names or otherwise any product of the kind herein described. While this section does not prohibit truthful representations in advertising and labeling of the percentage of content of any metallic substances in such products (e.g., contains 20 percent powdered aluminum) it does prohibit with respect thereto the use of representations such as, but not limited to, the following:

- "Plastic Steel."
- "Dries to steel."
- "Hardens into metal."
- "Steel in paste form."
- "Liquid aluminum."

"Instant aluminum."
"Real metallic putty."
"Fluid Steel."

[Guide 1]

§ 235.2 Use of the term "solder" or "weld."

Products which, when used, do not form a metallic seal or bond, shall not be represented as solders or as welding products unless it is clearly disclosed in connection therewith that they are nonmetallic, as for example, "Plastic Solder" or "Plastic Weld." A "solder" or "weld" product which is nonmetallic shall not be represented as producing a metallic seal or bond. This section does not prohibit an accurate representation of the percentage of metallic substance contained in a product. [Guide 2]

§ 235.3 Use of the word "porcelain."

(a) The word "porcelain" shall not be used to designate in brand names or otherwise any product which, after application, does not possess all of the chemical and physical properties of porcelain. Under this section products of the type herein described shall not be represented as being, among other things:

"Porcelain."
"Porcelain Glaze."
"Liquid Porcelain."
"Porcelain in Paste Form."
"Plastic Porcelain."
"Porcelain restorer."
"Porcelain renewer."

(b) This section does not prohibit truthful representations of the actual percentage of porcelain contained in an industry product as, for example,

"Contains 25% powdered porcelain."

[Guide 3]

§ 235.4 Epoxy adhesives.

(a) No product shall be represented as being an epoxy adhesive unless the epoxy component thereof is derived from an epoxide or oxirane which, when applied in use, chemically reacts with a hardener or curing agent to form a substantially infusible and insoluble bond.

(b) No product containing an epoxy shall be represented as having the characteristics and capabilities of an epoxy adhesive, where the epoxy com-

ponent present in the product is in an amount not sufficient to produce the characteristics and capabilities represented.

(c) No representation shall be made that the epoxy component in an industry product is present to produce the characteristics and capabilities of an epoxy adhesive where such component is not productive of such characteristics and capabilities, but is present for a different purpose and use. [Guide 4]

§ 235.5 Use of the word "rubber," etc.

(a) The word "rubber" or other words denominating rubber shall not be used to designate, in brand names or otherwise, any product which, after application, does not possess the essential characteristics of rubber. Under this section such a product shall not be represented as, for example, "Rubber," "Plastic Rubber," "Liquid Rubber," etc.

(b) This section does not prohibit truthful representation of the actual percentage of rubber contained in a product. [Guide 5]

§ 235.6 Misrepresentation (general).

(a) No representation shall be made in any manner respecting any adhesive products to which this part is applicable which is likely to mislead or deceive purchasers as to their nature, composition, characteristics, uses, effectiveness, capabilities, durability, toughness, hardness, adhesive strength, lasting effect, thermal or electrical properties, resistance to water, steam, gas, or chemicals, or in any other material respect.

(b) Among the representations prohibited by this section are the following:

(1) Representations that a product will seal, repair or mend "anything" when, in fact, there are certain materials which it cannot seal, repair or mend.

(2) Representations that a product is proof against or will withstand any specified temperature when in fact the product is adversely affected in any way when subjected to such temperature for any period of time.

(3) Representations that a product will effect permanent repairs if, in

fact, the repairs made by use of the product will not last as long as the product so repaired.

(4) Representations that a product makes any product like new if it does not actually restore the part thereof repaired to its original new condition. [Guide 6]

§ 235.7 Guarantees, warranties, etc.

Industry members shall not represent in advertising or otherwise that a product is "guaranteed" without a clear and conspicuous disclosure in close conjunction with such representation of:

- (a) The nature and extent of the guarantee; and
- (b) Any material conditions or limitations in the guarantee which are imposed by the guarantor; and
- (c) The manner in which the guarantor will perform thereunder; and
- (d) The identity of the guarantor.

NOTE: The Commission's April 26, 1960 Guides Against Deceptive Advertising of Guarantees (25 FR 3772) furnish additional guidance respecting guarantee representations and are to be considered as supplementing this section. Copies are available upon request.

[Guide 7]

§ 235.8 Placing deceptive material in the hands of others.

Manufacturers and distributors shall not place in the hands of wholesalers, jobbers, retailers, or others, promotional material by or through which they may deceive or mislead the purchasing and consuming public concerning any product. [Guide 3]

PART 236—GUIDE FOR AVOIDING DECEPTIVE USE OF WORD "MILL" IN THE TEXTILE INDUSTRY

Sec.

236.1 General rule.

236.2 The requirement of operational control.

236.3 Examples of deceptive usage of the word "mill."

236.4 Exception to general rule.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15538, Nov. 8, 1967, unless otherwise noted.

§ 236.1 General rule.

Simply stated, the general rule is that the word "mill" should not be used in the corporate, business, or trade name of any person or concern handling textiles, or in any other manner, unless the person or concern actually owns and operates or directly and absolutely controls the manufacturing facility in which all textile materials which are sold under that name are produced.

§ 236.2 The requirement of operational control.

(a) For a firm to qualify as a bona fide mill it must exercise direct and absolute control over the milling facility in which its merchandise is produced. Contracting to have milling operations performed by others will not qualify one as a mill.

(b) A distributor who furnishes yarns and other materials to a knitting mill for manufacture into garments according to the distributor's specifications is not a mill because it does not exercise direct and absolute operational control over the milling operations. A firm having a written "lease" with a mill whereby the mill allocated five of its looms and the workers at such looms to manufacture ribbon for the jobber from materials supplied by, and according to instructions from, the jobber is not a mill for the same reason. Even if a jobber takes the entire output of a mill, he does not thereby become a mill.

§ 236.3 Examples of deceptive usage of the word "mill."

Illustrative situations in which use of "mill" in designating trade status has been found to be deceptive are the following:

(a) A corporation which purchased unfinished silk and rayon cloth from weavers or manufacturers, caused such cloth to be dyed, printed, or processed into finished dry goods by others and sold such goods to retailers, members of the cutting up trade and others;

(b) A tailor who made made-to-measure suits but did not produce the cloth from which the suits were made;

(c) A selling agent who represented a number of suit fabric manufacturers;

(d) An independent retailer who claimed to be a "mill's outlet."

§ 236.4 Exception to general rule.

(a) Under the exceptional circumstances set forth below, the Commission may permit a nonmanufacturing concern to continue to use the word "mill" in its trade name provided that it is accompanied by a qualifying phrase which clearly states that the concern is not a mill and does not own or operate a facility which manufactures textiles. This exception only applies if:

(1) The name of the concern has become a valuable business asset and its loss would result in a substantial hardship; and

(2) The qualifying phrase will eliminate all possibility of deception.

(b) Factors to be taken into consideration in determining whether a trade name has become a valuable business asset the loss of which would become a hardship are as follows:

(1) Extent and period of time during which the name has been used;

(2) Funds and efforts expended in establishing and promoting the name;

(3) The extent of the goodwill enjoyed by the company;

(4) The adverse effect on the company that could reasonably be expected if use of the word "mill" had to be discontinued.

PART 237—GUIDES AGAINST DEBT COLLECTION DECEPTION

Sec.

237.0 Definitions of terms as used in these guides in this part.

237.1 Deception (general).

237.2 Disclosure of purpose.

237.3 Government affiliation.

237.4 Organizational titles.

237.5 Trade status.

237.6 Services.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15539, Nov. 8, 1967, unless otherwise noted.

§ 237.0 Definitions of terms as used in these guides in this part.

(a) "Industry Member" shall mean any person, firm, partnership, corporation, organization, association and any other legal entity engaged in the practice of collecting or attempting to collect any and all kinds of money debts for itself or others, or any person, firm, partnership, corporation, organization, association, or any other legal entity which places in the hands of others through sale or otherwise, or distributes for itself or others, any kind of material used or to be used in connection with collecting or attempting to collect such debts or seeking information concerning debtors, commonly called skip-tracing.

(b) "Debt" shall mean money which is due or alleged to be due from one to another.

(c) "Debtor" shall mean one who owes or is alleged to owe a money debt.

(d) "Creditor" shall mean one to whom a money debt is due or is alleged to be due.

(e) "Credit Bureau"—any person, firm, partnership, corporation, organization, association, or any other legal entity engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and character of individuals, firms, corporations, and any other legal entity being considered for credit extension, so that prospective creditor may be able to make a sound decision in the extension of credit.

(f) "Collection Agency"—any person, firm, partnership, corporation, organization, association, and any other legal entity which collects money debts for others.

§ 237.1 Deception (general).

An industry member shall not use any deceptive representation or deceptive means to collect or attempt to collect debts or to obtain information concerning debtors.

NOTE: The Commission has found that in the collection of debts some industry members either disguise the purpose for which information is desired or hold out an in-

ducement to debtors to furnish information which is not in their interest to supply and which they normally would not voluntarily furnish. In connection with the collection or attempted collection of debts or the seeking of information concerning debtors, the Commission has prohibited, among others, the following misrepresentations:

1. That an industry member was seeking information in connection with a survey.
2. That an industry member is in the business of a casting service for the motion picture or television industry.
3. That an industry member has a prepaid package for the debtor.
4. That a sum of money or valuable gift will be sent to the addressee if the required information is furnished.
5. That accounts have been turned over to innocent purchasers for value.
6. That debts have been turned over to an attorney or an independent organization engaged in the business of collecting past-due accounts.
7. That documents are legal process forms.

[Guide 1]

[32 FR 15539, Nov. 8, 1967, as amended at 33 FR 5661, Apr. 12, 1968]

§ 237.2 Disclosure of purpose.

(a) An industry member shall not use or cause to be used in his behalf in connection with the collection of or the attempt to collect a debt or in connection with obtaining or attempting to obtain information concerning a debtor, any forms, letters, questionnaires, or other material printed or written which do not clearly and conspicuously disclose that such are used for the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor. (This affirmative disclosure also applies to all forms of communication, oral or otherwise.)

(b) An industry member shall not, through sale or otherwise, place in the hands of others for use in connection with the collection of or attempt to collect a debt or in connection with obtaining or attempting to obtain information concerning a debtor, any forms, letters, questionnaires, or other material printed or written which do not clearly and conspicuously reveal thereon that such are used for the purpose of collecting or attempting to collect a debt or to obtain or attempt to obtain information concerning a debtor. [Guide 2]

[33 FR 5661, Apr. 12, 1968]

§ 237.3 Government affiliation.

An industry member shall not use any trade name, address, insignia, picture, emblem, or any other means which creates a false impression that such industry member is connected with or is an agency of government. [Guide 3]

§ 237.4 Organizational titles.

An industry member which is not in fact a "Credit Bureau" as defined in this part shall not use the term "Credit Bureau" in its corporate or trade name; nor shall it use any other term of similar import or meaning in its corporate or trade name, or in any other manner, as to create the false impression that such industry member is a credit bureau. [Guide 4]

[33 FR 5661, Apr. 12, 1968]

§ 237.5 Trade status.

In collecting or attempting to collect debts due him, an industry member shall not, through the use of any designation or by any other means, create the impression that he is a collection agency, unless he is such as defined in this part. [Guide 5]

§ 237.6 Services.

In the solicitation of accounts for collection or for ascertainment of credit status, an industry member shall not directly, or by implication, misrepresent the services he renders.

NOTE: Section 237.6 is general in nature since the varied misrepresentations used in connection with the solicitation of accounts for collection are numerous. Listed below are a few specific examples of representations which have been prohibited by the Commission because they were false or deceptive:

1. That the industry member's organization is separated into functional divisions, such as credit reporting, analytical, tracing, and collecting.
2. That the industry member employs local representatives, regional investigators, and lawyers on his personnel staff in various States and throughout the world.
3. That collection fees are less than what the industry member actually charges.
4. That no charges will be made for accounts unless they are collected.

5. That the industry member makes personal calls on debtors to collect accounts.

6. That the industry member will furnish credit reports to parties who assign accounts to him for collection.

[Guide 6]

PART 238—GUIDES AGAINST BAIT ADVERTISING

Sec.

238.0 Bait advertising defined.

238.1 Bait advertisement.

238.2 Initial offer.

238.3 Discouragement of purchase of advertised merchandise.

238.4 Switch after sale.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

§ 238.0 Bait advertising defined.¹

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

§ 238.1 Bait advertisement.

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. [Guide 1]

§ 238.2 Initial offer.

(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on

disclosure of the true facts, the purchaser may be switched from the advertised product to another.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception. [Guide 2]

§ 238.3 Discouragement of purchase of advertised merchandise.

No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise. Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

(a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.

(b) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it.

(c) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the merchandise is available only at designated outlets.

(d) The refusal to take orders for the advertised merchandise to be delivered within a reasonable period of time.

(e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.

(f) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 3]

§ 238.4 Switch after sale.

No practice should be pursued by an advertiser, in the event of sale of the advertised product, of "unselling" with the intent and purpose of selling other

¹For the purpose of this part "advertising" includes any form of public notice however disseminated or utilized.

merchandise in its stead. Among acts or practices which will be considered in determining if the initial sale was in good faith, and not a stratagem to sell other merchandise, are:

(a) Accepting a deposit for the advertised product, then switching the purchaser to a higher-priced product,

(b) Failure to make delivery of the advertised product within a reasonable time or to make a refund,

(c) Disparagement by acts or words of the advertised product, or the disparagement of the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it,

(d) The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. [Guide 4]

NOTE: *Sales of advertised merchandise.* Sales of the advertised merchandise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental byproduct of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation.

PART 239—GUIDES FOR THE ADVERTISING OF WARRANTIES AND GUARANTEES

Sec.

239.1 Purpose and scope of the guides.

239.2 Disclosures in warranty or guarantee advertising.

239.3 "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

239.4 "Lifetime" and similar representations.

239.5 Performance of warranties or guarantees.

AUTHORITY: Secs. 5, 6, 38 Stat. 719 as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 50 FR 18470, May 1, 1985, unless otherwise noted.

§ 239.1 Purpose and scope of the guides.

The Guides for the Advertising of Warranties and Guarantees are intended to help advertisers avoid unfair or deceptive practices in the advertising of warranties or guarantees. The

Guides are based upon Commission cases, and reflect changes in circumstances brought about by the Magnuson-Moss Warranty Act (15 U.S.C. 2301 *et seq.*) and the FTC Rules promulgated pursuant to the Act (16 CFR Parts 701 and 702). The Guides do not purport to anticipate all possible unfair or deceptive acts or practices in the advertising of warranties or guarantees and the Guides should not be interpreted to limit the Commission's authority to proceed against such acts or practices under section 5 of the Federal Trade Commission Act. The Commission may bring an action under section 5 against any advertiser who misrepresents the product or service offered, who misrepresents the terms or conditions of the warranty offered, or who employs other deceptive or unfair means.

Section 239.2 of the Guides applies only to advertisements for written warranties on consumer products, as "written warranty" and "consumer product" are defined in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, that are covered by the Rule on Pre-Sale Availability or Written Warranty Terms, 16 CFR Part 702. The other sections of the Guides apply to the advertising of any warranty or guarantee.

[50 FR 18470, May 1, 1985; 50 FR 20899, May 21, 1985]

§ 239.2 Disclosures in warranty or guarantee advertising.

(a) If an advertisement mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prior to sale, at the place where the product is sold, prospective purchasers can see the written warranty or guarantee for complete details of the warranty coverage.¹

¹In television advertising, the Commission will regard any disclosure of the pre-sale availability of warranties as complying with this Guide if the advertisement makes the necessary disclosure simultaneously with or

Continued

Examples: The following are examples of disclosures sufficient to convey to prospective purchasers that, prior to sale, at the place where the product is sold, they can see the written warranty or guarantee for complete details of the warranty coverage. These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive. In each example, the portion of the advertisement that mentions the warranty or guarantee is in regular type and the disclosure is in italics.

A. "The XYZ washing machine is backed by our limited 1 year warranty. *For complete details, see our warranty at a dealer near you.*"

B. "The XYZ bicycle is warranted for 5 years. *Some restrictions may apply. See a copy of our warranty wherever XYZ products are sold.*"

C. "We offer the best guarantee in the business. *Read the details and compare wherever our fine products are sold.*"

D. "See our full 2 year warranty at the store nearest you."

E. "Don't take our word—take our warranty. *See our limited 2 year warranty where you shop.*"

(b) If an advertisement in any catalogue, or in any other solicitation² for mail order sales or for telephone order sales mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prospective purchasers can obtain complete details of the written warranty or guarantee free from the seller upon specific written request or from the catalogue or other solicitation (whichever is applicable).

Examples: The following are examples of disclosures sufficient to convey to consumers how they can obtain complete details of the written warranty or guarantee prior to placing a mail or telephone order. These examples are illustrative, not exhaustive. In each example, the portion of the advertisement that mentions the warranty or guarantee is in regular typeface and the disclosure is in italics.

A. "ABC quality cutlery is backed by our 10 year warranty. *Write to us for a free copy at: (address).*"

immediately following the warranty claim and the disclosure is made in the audio portion, or, if in the video portion, it remains on the screen for at least five seconds.

² See note 1.

B. "ABC power tools are guaranteed. *Read about our limited 90 day warranty in this catalogue.*"

C. "Write to us for a free copy of our full warranty. *You'll be impressed how we stand behind our product.*"

[50 FR 20899, May 21, 1985]

§ 239.3 "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

(a) A seller or manufacturer should use the terms "Satisfaction Guarantee," "Money Back Guarantee," "Free Trial Offer," or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser's request.

(b) An advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the "Satisfaction Guarantee" or similar representation.

Examples: These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a satisfaction guarantee that is conditioned upon return of the unused portion within 30 days) "We guarantee your satisfaction. If not completely satisfied with Acme Spot Remover, return the unused portion within 30 days for a full refund."

Example B: (In an advertisement mentioning a money back guarantee that is conditioned upon return of the product in its original packaging) "Money Back Guarantee! Just return the ABC watch in its original package and ABC will fully refund your money."

§ 239.4 "Lifetime" and similar representations.

If an advertisement uses "lifetime," "life," or similar representations to describe the duration of a warranty or guarantee, then the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.

Examples: These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a lifetime guarantee on an automobile muffler where the duration of the guarantee is measured by the life of the car in which it is installed) "Our lifetime guarantee on the Whisper Muffler protects you for as long as your car runs—even if you sell it, trade it, or give it away!"

Example B: (In an advertisement mentioning a lifetime guarantee on a battery where the duration of the warranty is for as long as the original purchaser owns the car in which it was installed) "Our battery is backed by our lifetime guarantee. Good for as long as you own the car!"

§ 239.5 Performance of warranties or guarantees.

A seller or manufacturer should advertise that a product is warranted or guaranteed only if the seller or manufacturer, as the case may be, promptly and fully performs its obligations under the warranty or guarantee.

PART 240—GUIDES FOR ADVERTISING ALLOWANCES AND OTHER MERCHANDISING PAYMENTS AND SERVICES

Sec.

- 240.1 When does the law apply?
- 240.2 Who is a seller?
- 240.3 Who is a customer?
- 240.4 What is interstate commerce?
- 240.5 What are services or facilities?
- 240.6 Need for a plan.
- 240.7 Proportionally equal terms.
- 240.8 Seller's duty to inform.
- 240.9 Availability to all competing customers.
- 240.10 Need to understand terms.
- 240.11 Checking customer's use of payments.
- 240.12 Competing customers.
- 240.13 Wholesaler or third party performance of seller's obligations.
- 240.14 Customer's liability.
- 240.15 Third party liability for double billing.
- 240.16 Meeting competition.
- 240.17 Cost justification.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46; 49 Stat. 1526; 15 U.S.C. 13, as amended, unless otherwise noted.

SOURCE: 34 FR 8285, May 29, 1969, unless otherwise noted.

§ 240.1 When does the law apply?

Sections 2 (d) and (e) apply to a seller of products in interstate commerce, if he either directly or through an intermediary (a) pays for services or facilities furnished by a customer in connection with the distribution of his products [section 2(d)], or (b) furnishes such services or facilities to a customer [section 2(e)] who competes with any other customer in the resale of the seller's products of like grade and quality.

[Guide 1]

§ 240.2 Who is a seller?

"Seller" includes anyone (manufacturer, wholesaler, distributor, etc.) who sells products for resale, with or without further processing. Selling candy to a retailer is a sale for resale without processing. Selling corn syrup to a candy manufacturer is an example of a sale for resale with processing.

[Guide 2]

§ 240.3 Who is a customer?

(a) A "customer" is someone who buys for resale directly from the seller, the seller's agent or broker; and, in addition, a "customer" is any buyer of the seller's product for resale who purchases from or through a wholesaler or other intermediate reseller. In this part, the word "customer" which is used in section 2(d) of the Act includes "purchaser" which is used in section 2(e).

NOTE: In determining whether a seller has fulfilled his obligations toward his customers, the Commission will recognize that there may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer who purchases solely from other retailers, or one who makes only sporadic purchases, or one who does not regularly sell the seller's product or who is a type of retail outlet not usually selling such products (e.g., a hardware store stocking a few isolated food items) will not be considered a "customer" of the seller unless the seller has been put on notice that such retailer is selling his product.

(b) "Competing customers" are all businesses that compete in the resale

of the seller's products of like grade and quality at the same functional level of distribution regardless of whether they purchase direct from the supplier or through some intermediary.

Example 1: A manufacturer sells to some retailers directly and to others through wholesalers. Retailer "X" purchases the manufacturer's product from a wholesaler and resells some of it to retailer "Y." Retailer "X" is a customer of the manufacturer. Retailer "Y" is not a customer unless the fact that he purchases the manufacturer's product is known to the manufacturer.

Example 2: A manufacturer sells directly to some independent retailers, sells to the headquarters of chains and of retailer-owned cooperatives, and also sells to wholesalers. The direct-buying independent retailers, the headquarters of chains and of retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the manufacturer. Individual retail outlets which are part of the chains or members of the retailer-owned cooperatives are not customers of the manufacturer.

[Guide 3]

§ 240.4 What is interstate commerce?

This term has not been precisely defined in the statute. In general, if there is any part of a business which is not wholly within one State (for example, sales or deliveries of products, their subsequent distribution or purchase, or delivery of supplies or raw materials), the business may be subject to the Robinson-Patman Act. Sales in the District of Columbia are also covered by the Act.

[Guide 4]

§ 240.5 What are services or facilities?

These terms have not been exactly defined by the statute or in decisions. The following are merely examples—the Act covers many other services and facilities.

(a) The following are some of the services or facilities covered by the Act where the seller pays the buyer for furnishing them:

Any kind of advertising, including cooperative advertising;
Handbills;
Window and floor displays;
Demonstrators and demonstrations.

(b) Here are some examples of services or facilities covered by the Act when the seller furnishes them to a customer:

Any kind of advertising;
Catalogs;
Demonstrators;
Display and storage cabinets;
Display materials;
Special packaging, or package sizes;
Accepting returns for credit;
Prizes or merchandise for conducting promotional contests.

NOTE: In this part, the term "services" is used to encompass both "services and facilities."

[Guide 5]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15699, Aug. 4, 1972]

§ 240.6 Need for a plan.

If a seller makes payments or furnishes services that come under section 2 (d) or (e) of the Clayton Act, as amended, he should do it under a plan that meets several requirements. In addition, if there are many competing customers to be considered, or if the plan is at all complex, the seller would be well advised to put his plan in writing. Briefly, the requirements are:

(a) The payments or services under the plan should be available on proportionally equal terms to all competing customers. (See § 240.7 of this part.)

(b) The seller should take action designed to inform all of his competing customers of the existence of and essential features of the promotion plan in ample time for them to take full advantage of it. (See § 240.8 of this part.)

(c) If the basic plan is not functionally available to (i.e., suitable for and usable by) some customers competing in the resale of the seller's products of like grade and quality with those being furnished payments or services, alternatives that are functionally available should be offered to such customers. (See § 240.9 of this part.)

(d) In informing customers of the details of a plan, the seller should provide them sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made or serv-

ices furnished. (See § 240.10 of this part.)

(e) The seller should take reasonable precautions to see that the services are actually performed and that he is not overpaying for them. (See § 240.11 of this part.)

[Guide 6]

§ 240.7 Proportionally equal terms.

The payment or services under the plan should be made available to all competing customers on proportionally equal terms. This means that payments or services should be proportionalized on some basis that is fair to all customers who compete in the resale of the seller's products. No single way to proportionally equalize is prescribed by law. Any method that treats competing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods which are fair to all competing customers are also acceptable.

Example 1: A seller may properly offer to pay a specified part (say 50 percent) of the cost of local advertising up to an amount equal to a set percentage (such as 5 percent) of the dollar volume of purchases during a specified time.

Example 2: A seller may properly place in reserve for each customer a specified amount of money for each unit purchased, and use it to reimburse those customers for the actual cost of their advertising of the seller's product.

Example 3: A seller should not select one or a few customers to receive special allowances (e.g., 5 percent of purchases) to promote his product, while making allowances available on some lesser basis (e.g., 2 percent of purchases) to customers who compete with them.

Example 4: A seller's plan should not provide an allowance on a basis that has rates graduated with the amount of goods purchased, as, for instance, 1 percent of the first \$1,000 purchases per month, 2 percent of second \$1,000 per month, and 3 percent of all over that.

Example 5: A seller should not identify or feature one or a few customers in his own advertising without making the same service available on proportionally equal terms to customers competing with the identified customer or customers.

Example 6: A seller who makes his employees available or arranges with a third party to furnish personnel for purposes of performing work for a customer should make the same offer available on proportionally equal terms to all other competing customers. In addition the seller should offer usable and suitable alternatives of equivalent measurable cost to those competing customers to whom such services are not usable and suitable.

Example 7: A seller should not offer to pay a straight-line rate for advertising if such payment results in a discrimination between competing customers: e.g., the offer of \$1 per line for advertising in a newspaper that charges competing customers different amounts for the same advertising space.

(The straight-line rate for advertising is an acceptable method for allocation of advertising funds, if the seller offers an alternative to retailers that pay more than the lowest newspaper rate which enables small retailers to obtain the same percent of the cost of advertising as large retailers. Example: A manufacturer's straight-line rate of payment of \$1 per line is based on 50 percent of the newspaper's lowest contract rate of \$2 per line. The manufacturer should offer to pay 50 percent of the newspaper advertising cost of the smaller retailers who established by invoice or otherwise that they paid more than the lowest contract rate of \$2 per line for advertising.)

Example 8: A seller should not refuse to participate in the cost of ads that feature prices other than the seller's suggested prices. (See § 240.9.)

[Guide 7]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15699, Aug. 4, 1972]

§ 240.8 Seller's duty to inform.

(a) The seller should take reasonable action, in good faith, to inform all his competing customers of the availability of his promotional program. Such notification should include all the relevant details of the offer in time to enable customers to make an informed judgment whether to participate. In the alternative, such notification should include a summary of the essential features and a specific source to contact for further details on a specific promotion. Where such one-step notification is impracticable, the seller may, in lieu thereof, maintain a continuing program of first notifying all competing customers of the types of promotions offered by the seller and a specific source for the customer to

contact in order to receive full and timely notice of all relevant details of the supplier's promotions. Such notice should also inform all competing customers that the seller offers advertising allowances and/or other promotional assistance that are usable in a practical business sense by all retailers regardless of size. When a customer indicates his desire to be put on the notification list, the seller should keep that customer advised of all promotions available in his area as long as the customer so desires. The seller can make the required notification by any means he chooses, but if he wants to be able to show later that he gave notice to a certain customer, he is in a better position to do so if it was given in writing.

(b) If more direct methods of notification are impracticable, a seller may employ one or more of the following methods, the sufficiency of which will depend upon the nature of the industry and the complexity of his own distribution system. Different sellers may find that different notification methods are most effective for them.

The seller may enter into contracts with his wholesalers, distributors, or other third parties which conform to the requirements of § 240.13 of this part.

(2) The seller may place appropriate announcements on product containers or inside thereof with conspicuous notice of such enclosure on the outside. Where this notification procedure is utilized, however, the seller should take whatever steps are necessary to help insure that the notice will come to the attention of the customer's managerial personnel.

(3) The seller may publish notice of the availability and essential features of a promotional plan in a publication of general distribution in the trade.

NOTE: Whatever procedure is used to give notice to the customer it should prove to be effective in practice. In many instances where customers of wholesalers or other intermediaries are involved and it is necessary to coordinate buying for a promotion such as a one-time buy promotion, a minimum lead time for notification may be 60 days or more.

Example 1: A seller has a plan for the retail promotion of his products in Philadelphia. Some of his retailing customers pur-

chase directly, and he offers the plan to them. Some other Philadelphia retailers purchase his products through wholesalers. The seller may use the wholesalers to reach the retailing customers who buy through them, either by having the wholesalers notify those retailers in accordance with § 240.13, or by using the wholesalers' customer lists for direct notification by the seller.

Example 2: A seller has a plan for the retail promotion of his products in Kansas City. Some of his retailing customers purchase directly and he offers the plan to them. Others purchase his products through wholesalers. The seller may satisfy his notification obligations to them by undertaking, in good faith, one or more of the following measures:

A. Placing on a shipping container or a product package that can reasonably be expected to come to the attention of the managerial personnel of all retailing customers handling the promoted product in time to enable them to participate in the program a conspicuous notice of the availability and essential features of his proposal, identifying a specific source for further particulars and details. In lieu of identifying a source for further particulars, brochures describing the details of the offer may be included in the shipping containers. If it is impractical to include the essential features of the proposal on or in the shipping container, the seller may substitute in the notice, as stated above, a summary of the types of promotions offered (e.g., allowances for advertising in newspapers, hand bills, or envelope stuffers; allowances for radio or television advertising; short term display allowances, etc.) and a statement that such promotions are usable in a practical business sense by all retailers regardless of size. In order to insure that such notices will come to the attention of the appropriate personnel it may well be necessary for the seller to supplement notices on shipping containers, especially during the initial stages of such a procedure, with additional notices, such as trade journal publications, invoice notices, envelope stuffers for use by wholesalers, etc.

B. If a promotional plan simply consists of providing retailers with display materials, including the materials within the product container.

C. Advising customers from accurate and reasonably complete mailing lists. If the product may be sold lawfully only under Government license (alcoholic beverages, etc.), informing all license holders would be sufficient.

D. Placing an announcement of the availability and essential features of promotional programs, and identifying a specific source for further particulars and details, at rea-

reasonable intervals in publications which have general and widespread distribution in the trade, and which are recognized in the trade as means by which sellers announce the availability of such programs.

Example 3: The seller has a wholesaler-oriented plan whereby he pays wholesalers to advertise the seller's product in the wholesalers' order books, or in the wholesalers' price lists directed to retailers purchasing from the wholesalers. He should notify all competing wholesalers of the availability of this plan, but the seller is not required to notify retailing customers.

Example 4: A seller who sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of his products at the retail level. If the seller directly notifies not only all competing direct purchasing retailers, but also all competing retailers purchasing through the wholesalers, as to the availability, terms and conditions of the plan, the seller is not required to notify his wholesalers.

Example 5: A seller regularly promotes his products at the retail level, and during the year he has various special promotional offers. His competing customers include large direct-purchasing retailing customers and smaller customers who purchase through wholesalers. Many of the promotions he offers can best be used by his smaller customers if the funds to which the smaller customers are entitled are pooled and used by the wholesalers in their behalf (newspaper advertisements, for example). The seller may encourage, but not coerce, the retailer purchasing through a wholesaler to designate a wholesaler as his agent for receiving notice of, collecting, and using promotional allowances for him. If a wholesaler or other intermediary by written agreement with a retailer is actually authorized to collect promotional payments from suppliers, the seller may assume that notice of, and payment under, a promotional plan to such wholesaler or intermediary constitutes notice and payment to the retailer. (A seller should not rely on a written agreement authorizing an intermediary to receive notice of and/or payment under a promotional plan for a retailer, if the seller knows, or should know, that the retailer was coerced into signing the agreement. In addition, a seller should assume that an intermediary is not authorized to receive notice of and/or payment under a promotional plan for a retailer unless there is a written authorization signed by such retailer.)

(c) A seller who follows any procedure reasonably designed to inform all his competing customers of his promotional program, including any of the procedures illustrated under Example

2 above, will be considered by the Commission to have fulfilled his "good faith" obligation under this section if he accompanies such procedure with the following supplementary measures: At regular intervals (of at least every 90 days) during the year, a seller who conducts promotional programs takes affirmative steps to verify the effectiveness of his notification procedure by making spot checks designed to reach a representative cross section of his indirect-buying customers. Whenever such spot checks indicate that the notification procedure is deficient, in that some customers who purchase through wholesalers or other intermediaries are not receiving actual notice of the promotion, the seller takes immediate steps to expand or to supplement his notification procedure in a manner reasonably designed to eliminate the repetition or continuation of any such deficiency in the future.

[Guide 8]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15699, Aug. 4, 1972]

§ 240.9 Availability to all competing customers.

(a) The plan should be such that all types of competing customers may participate. It should not be tailored to favor or discriminate against a particular customer or class of customers, but should in its terms be usable in a practical business sense by all competing customers. This may require offering all such customers more than one way to participate in the plan or offering alternative terms and conditions to customers for whom the basic plan is not usable and suitable. The seller should not either expressly, or by the way the plan operates, eliminate some competing customers, although he may offer alternative plans designed for different customer classes. If he offers alternative plans, all of the plans offered should provide the same proportionate equality and the seller should inform competing customers of the various alternative plans.

(b) With respect to promotional plans offered to retailers, the seller should insure that his plans or alternatives do not bar any competing re-

tailor customers from participation whether they purchase directly from him or through a wholesaler or other intermediary.

(c) When a seller, in good faith, offers a basic plan, including alternatives, which is reasonably fair and nondiscriminatory, and refrains from taking any steps which would prevent any customer, or class of customers, from participating in his program, he shall be deemed to have satisfied his obligation to make his plan "functionally available" to all customers, and the failure of any customer or customers to participate in the program shall not be deemed to place the seller in violation of the Act.

Example 1: A manufacturer offers a plan of short-term store displays² of varying sizes, including some which are suitable for each of his competing customers and at the same time are small enough so that each customer may make use of the promotion in a practical business sense. The plan also calls for uniform, reasonable certification of performance by the retailer. Because they are reluctant to process a reasonable amount of paperwork, some small retailers do not participate. This fact is not deemed to place a manufacturer in violation of § 240.9 and he is under no obligation to provide additional alternatives.

Example 2: A manufacturer offers a plan for cooperative advertising on radio, TV, or in newspapers of general circulation.³ Be-

cause the purchases of some of his customers are too small this offer is not "functionally available" to them. The manufacturer should offer them alternative(s) on proportionally equal terms that are usable by them and suitable for their business.

Example 3: The seller's plan provides for furnishing demonstrators to large department store customers. He should provide usable and suitable alternatives on proportionally equal terms to those competing customers who cannot use demonstrators. The alternatives may be usable and suitable services furnished by the seller, or payments by the seller to customers for their advertising or promotion of the seller's product.

[Guide 9]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15700, Aug. 4, 1972]

§ 240.10 Need to understand terms.

In informing customers of the details of a plan, the seller should provide them sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made or services furnished.

[Guide 10]

§ 240.11 Checking customer's use of payments.

(a) The seller should take reasonable precautions to see that services he is

²Allowances that have little or no relationship to cost or approximate cost of the service provided by the retailer may be considered to be in violation of section 2(d) or subject to the prohibitions of section 2(a) of the amended Clayton Act, such as an allowance of \$1 per case of goods purchased if the retailer furnishes a display or provides specific shelf space, or a promotional allowance of 10 percent of purchases during a specific period of time if the retailer places an ad of at least 3 column inches in a newspaper. In addition, a customer that induces such allowances may be proceeded against under section 5 of the Federal Trade Commission Act. Also, the purchase of display or shelf space, whether directly or by means of so-called allowances, may be considered an "unfair method of competition" in violation of section 5 of the Federal Trade Commission Act.

³In order to avoid the tailoring of promotional programs that discriminate against particular customers or class of customers, the seller in offering to pay allowances for newspaper advertising should offer to pay

the same percent of the cost of newspaper advertising for all competing customers in a newspaper of the customer's choice, or at least in those newspapers that meet the requirements for second-class-mail privileges. Examples of promotional plans that may discriminate against small retailers are: (1) A plan that offers to pay 75 percent of the cost of advertising in daily newspapers, which are the regular advertising media of the seller's large or chain store customers, and only 50 percent of the cost of advertising in other newspapers that may be used by small retail customers; and (2) a plan that pays allowances for advertising in daily newspapers, which are the regular advertising media of the seller's large or chain store customers, but does not pay allowances for advertising in semiweekly, weekly, or other newspapers that may be desirable by small retail customers, who are offered, as an alternative to advertising in daily newspapers, services such as envelope stuffers, handbills, window banners, etc. (see § 240.7.)

paying for are furnished and also that he is not overpaying for them. Moreover, the customer should expend the allowance solely for the purpose for which it was given. If the seller knows or should know that what he pays or furnishes is not being properly used by some customers, the improper payments or services should be discontinued.

(b) A seller, who, in good faith, takes reasonable and prudent measures to verify the performance of his competing customers will be deemed to have satisfied his obligations under the Act. Also, a seller who, in good faith, concludes a promotional agreement with wholesalers or other intermediaries and who otherwise conforms to the standards of § 240.13 of this part shall be deemed to have satisfied this obligation. If a seller has taken such steps, the fact that a particular customer has retained an allowance in excess of the cost or approximate cost, if the actual cost is not known, of services performed by him shall not alone be deemed to place a seller in violation of the Act. (When customers may have different but closely related cost in furnishing services that are difficult to determine, such as the cost for distributing coupons from a bulletin board or using a window banner, the seller may furnish to each customer the same payment if it has a reasonable relationship to the cost of providing the service or is not grossly in excess thereof.)

Example: A manufacturer gives "functionally available" promotional allowances for cooperative advertising which require placing advertisements in whatever medium the customer normally utilizes—e.g., radio, newspapers, magazines, handbills, etc. The manufacturer requires that each customer's request for payment be signed and attest that the required performance was rendered. Further, whenever evidence of the advertising—such as a tear sheet or a copy of the invoice from the radio station—is readily available to the customer, the manufacturer requires that such evidence accompany the request for payment. In cases in which such verification is not readily available, the manufacturer spot checks in a manner designed to reach a representative cross section of participating retailer customers to ascertain proof of performance. The manufacturer has satisfied his obligations of verification under the Act.

[Guide 11]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15700, Aug. 4, 1972]

§ 240.12 Competing customers.

The seller is required to provide in his plan only for those customers who compete with each other in the resale of the seller's products of like grade and quality. Therefore, a seller should make available to all competing wholesalers any plan providing promotional payments or services to wholesalers, and similarly, should make available to all competing retailers any plan providing promotional payments or services to retailers. With these requirements met, a seller can limit the area of his promotion. However, this section is not intended to deal with the question of a seller's liability for use of an area promotion where the effect may be to injure the seller's competition.

Example 1: Manufacturer A, located in Wisconsin and distributes shoes nationally, sells shoes to three retailers who compete with each other and sell only in the Roanoke, Va., area. He has no other customers selling in Roanoke or its vicinity. If he offers his promotion to one Roanoke customer, he should include all three, but he can limit it to them. The trade area selected should be a natural one and not drawn arbitrarily so as to exclude competing retailers.

Example 2: A national seller has direct-buying retailing customers reselling exclusively within the Baltimore City trade area, and other customers within that area purchasing through wholesalers. The seller may lawfully engage in a promotional campaign confined to the Baltimore area, provided he affords all of his retailing customers within the area the opportunity to participate, including those who purchase through wholesalers.

Example 3: A seller manufactures and sells men's suits and sport jackets (of one quality level) to retail stores nationally. He may restrict allowances to Philadelphia area retailers for their promotion of sport jackets during a particular season. He should not restrict allowances in the Philadelphia area for the promotion of certain styles of sport jackets unless all retailers of his sport jackets in the area are offered the opportunity to purchase the promoted styles and participate in the promotion.

NOTE: The seller should be careful here not to discriminate against customers located on the fringes but outside the area select-

ed for the special promotion, since they may be actually competing with those participating.

[Guide 12]

§ 240.13 Wholesaler or third party performance of seller's obligations.

(a) A seller may, in good faith, enter into written agreements with intermediaries, such as wholesalers, distributors or other third parties, including promoters of tripartite promotional plans, which provide that such intermediaries will perform all or part of the seller's obligations under this part. However, the interposition of intermediaries between the seller and his customers does not relieve the seller of his ultimate responsibility of compliance with the law. The seller, in order to demonstrate his good faith effort to discharge his obligations under this part, should include in any such agreement provisions that the intermediary will:

(1) Give notice to the seller's customers in conformity with the standards set forth in § 240.8 of this part;

(2) Check customer performance in conformity with the standards set forth in § 240.11 of this part;

(3) Implement the plan in a manner which will insure its functional availability to the seller's customers in conformity with the standards set forth in § 240.9 of this part. (This must be done whether the plan is one devised by the seller himself or by the intermediary for use by the seller's customers);

(4) Provide certification in writing and at reasonable intervals that the seller's customers have been and are being treated in conformity with the agreement.

(b) A seller who negotiates such agreements with his wholesalers, distributors or third party promoters will be considered by the Commission to have justified his "good faith" obligations under this section if he accompanies such agreements with the following supplementary measures: At regular intervals (of at least every 90 days) during the year, the seller takes affirmative steps to verify that his customers are receiving the proportionally equal treatment to which they are entitled by making spot checks de-

signed to reach a representative cross section of his customers. Whenever such spot checks indicate that the agreements are not being implemented in such a way that his customers are receiving such proportionally equal treatment, the seller takes immediate steps to expand or to supplement such agreements in a manner reasonably designed to eliminate the repetition or continuation of any such discriminations in the future.

Example 1: A seller should not buy advertising time from a radio station and have the station furnish free radio time only to certain favored customers of the seller.

Example 2: A seller should not participate in a tripartite promotional plan providing for in-store promotion of his products unless all his competing customers are given an opportunity to participate in the intermediary's basic plan and, in the event some cannot use the basic plan, a suitable and usable alternative is made available on proportionally equal terms. A seller may demonstrate his good faith effort to discharge his obligations, in the event the intermediary operates a nondiscriminatory program in a discriminatory manner, by establishing that he has an agreement with the intermediary as described above and has fulfilled his duty to conduct periodic checks of the intermediary's performance.

Example 3: A seller should not participate in a tripartite plan involving many sellers if the customers to whom the plan is offered is required to purchase the products of other participating sellers before they are eligible to receive the benefits of the promotional program. The customer of any one seller should not be required to purchase or promote other sellers' products as a condition to receiving promotional payments or services from the seller, even though a tripartite program is involved.

(c) Intermediaries administering promotional assistance programs on behalf of a seller may violate section 5 of the Federal Trade Commission Act if they have agreed to perform the seller's obligations under the law with respect to a program which they have represented to be usable and suitable for all the seller's competing customers if it should later develop that the program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

Example: Promoter A devises a program for in-store advertising of grocery products

on shopping carts. No alternative means of participation are provided. Seller B enters into a contract with A for participation in the program. In fact, some of Seller B's competing customers do not have shopping carts. Assuming that Seller B is in violation of section 2(d) of the Clayton Act, as amended, Promoter A may be in violation of section 5 of the Federal Trade Commission Act for his participation in the program which resulted in B's violation.

[Guide 13]

§ 240.14 Customer's liability.

Sections 2 (d) and (e) apply to sellers and not to customers. However, a customer who knows, or should know, that he is receiving payments or services which are not available on proportionally equal terms to his competitors engaged in the resale of the same seller's products, may be proceeded against by the Commission under section 5 of the Federal Trade Commission Act, which prohibits unfair methods of competition. Also, retailers that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under section 5 of the FTC Act and/or, under some circumstances, section 2(f) of the amended Clayton Act.

Example 1: A customer should not induce or receive advertising allowances for special promotion of the seller's products in connection with the customer's anniversary sale or new store opening, unless he has taken such affirmative steps as would satisfy a reasonable and prudent businessman that such allowances are affirmatively offered and otherwise made available by such seller on proportionally equal terms to all of its other customers competing with the customer in the distribution of the seller's products and that usable and suitable alternatives are offered them if the basic offer is not suitable for and usable by them.

Example 2: A customer should not induce or receive seller contributions to the cost of his institutional advertising, unless he has taken such affirmative steps as would satisfy a reasonable and prudent businessman that such allowances are affirmatively offered and otherwise made available by such seller on proportionally equal terms to all of its other customers competing with the customer in the distribution of the seller's products and that usable and suitable alternatives are offered them if the basic offer is not suitable for and usable by them.

Example 3: A customer, an experienced buyer, is offered an allowance of 25 percent

of his purchase volume by a seller for cooperative advertising to be paid for 100 percent by the seller. The customer knows, or should know, that most cooperative advertising programs in the industry allow payments of from 3 to 7 percent of purchases, and require 50-50 sharing by the seller and the customer. He would be on notice to inquire of the seller and to take such other affirmative steps as would satisfy a reasonable and prudent businessman that such allowances are affirmatively offered and otherwise made available by such seller on proportionally equal terms to all of its other customers competing with the customer in the distribution of the seller's products.

Example 4: A customer should not receive from a seller or intermediary services such as those performed in connection with a store opening, remodeling or special sales promotion, etc., unless he has taken such affirmative steps as would satisfy a reasonable and prudent businessman that such services are affirmatively offered and otherwise made available by such seller on proportionally equal terms to all of its other customers competing with the customer in the distribution of the seller's products and that usable and suitable alternatives are offered them if the basic offer is not suitable for and usable by them.

Example 5: Frequently the employees of sellers or third parties such as brokers perform in-store services for their grocery retailer customers such as stocking of shelves, building of displays and checking or rotating inventory, etc. A customer operating a retail grocery business should not induce or receive such services when the customer knows or should know that such services are not available on proportionally equal terms to all of the other customers of the seller competing with him in the distribution of the seller's products.

Example 6: Where a customer has entered into a contract, understanding, or arrangement for the purchase of advertising with a newspaper or other advertising media which provides for a deferred rebate or other reduction in the price thereof, he should advise any seller from whom he claims reimbursement for such advertising that the claimed rate of reimbursement is subject to a deferred rebate or other reduction in price. In the event that any rebate or adjustment in the price is received, the customer should refund to the seller the amount of any excess payment or allowance.

Example 7: A customer should not induce or receive an allowance in excess of that offered in the seller's advertising plan by billing the seller at "vendor rates" or for any other amount in excess of that authorized in the seller's promotional program.

[Guide 14]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15700, Aug. 4, 1972]

§ 240.15 Third party liability for double billing.

An advertising medium (newspaper, broadcast station, printer of catalogs, etc.) which (a) publishes a rate schedule containing fictitious rates or rates which are not reasonably expected to be applicable to a representative number of advertisers, or (b) furnishes a customer or his representative with an invoice that does not reflect the customer's actual net advertising cost, or that does not clearly state the discounts, rebates, earned rebates, etc., to which the invoice amount may be subject, or to which the invoiced party may be entitled, may violate section 5 of the Federal Trade Commission Act if the customer uses such deceptive schedule or invoice for a claim for an advertising allowance, payment or credit greater than that to which he is entitled under the terms of the supplier's promotional program.

Example 1: Newspaper A has a "national" rate of \$1.50 per inch and a "local" rate of \$1 per inch. Retailer B places an advertisement with Newspaper A for a product sold to him by Supplier C, from whom he is later to seek reimbursement under Supplier C's cooperative advertising plan. Newspaper A should not furnish two bills to Retailer B, one at the "national" rate of \$1.50 per inch, the other at the "local" rate of \$1 per inch actually charged Retailer B.

Example 2: Newspaper A has various published rates. Retailer B is a large advertiser who in the past has earned the lowest rate. Newspaper A should not submit monthly invoices to Retailer B at a high rate agreed to by the parties unless the invoice discloses that Retailer B may receive a rebate, and a statement as to the amount or approximate amount of the rebate, if known, and if not known, the amount of rebate Retailer B could reasonably anticipate.

Example 3: Radio Station A has a flat rate of \$10 for 30-second spot announcements, subject to volume discounts ranging up to 50 percent. Retailer B buys enough spots to qualify for the 50-percent discount. Radio Station A should not furnish Retailer B with an invoice that does not show either the \$5 net cost to Retailer B or the 50-percent discount to which the \$10 amount is subject.

Example 4: Advertising Agent A purchases a large volume of newspaper advertising

space at a low, unpublished negotiated rate. Agent A subsequently sells such space to various retailers at a rate lower than each could purchase the space from the newspaper. Agent A should not furnish the retailers invoices showing a rate charge higher than that actually paid him by the retailers.

[Guide 15]

[34 FR 8285, May 29, 1969, as amended at 37 FR 15700, Aug. 4, 1972]

§ 240.16 Meeting competition.

A seller charged with discrimination in violation of section 2(d) or section 2(e) may defend his actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing seller to the particular customer, or to meet equivalent services furnished by a competing seller to the particular customer. This defense, however, is subject to important limitations. For instance, it is insufficient to defend a charge of violating either section 2(d) or 2(e) solely on the basis that competition in a particular industry is very keen, requiring that special allowances be given to some customers if a seller is "to be competitive." [Guide 16]

§ 240.17 Cost justification.

It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a seller to show that such payment, service, or facility could be justified through savings in the cost of manufacture, sale or delivery. [Guide 17]

PART 241—GUIDES FOR THE DOG AND CAT FOOD INDUSTRY

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AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 34 FR 3619, Feb. 28, 1969, unless otherwise noted.

§ 241.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) "Industry product" means a food for dogs or cats and includes all types of dry, semimoist, frozen, canned, and other commercial foods manufactured or marketed for consumption by domesticated dogs or cats. The term also includes special "candy" for such dogs and cats but does not include animal medicines or remedies.

(b) "Industry member" means a person, firm, corporation, or organization engaged in the importation, manufacture, sale or distribution of an industry product.

(c) "Ingredients" are the constituent materials making up a food for dogs or cats. Except as otherwise prescribed in this part the names and definitions of ingredients adopted by the Association of American Feed Control Officials will be used in the administration of this part, except that with respect to products which have been certified by the Department of Agriculture under the provisions of 9 CFR 355.1-355.42, the definitions set forth in those regulations will be used. [Guide 1]

§ 241.2 Misuse of terms.

Industry products and their respective ingredients should be identified and designated in accordance with the provisions of paragraph (c) of § 241.1 of this part, or if no name or definition has been established for an ingredient, it should be designated or identified by its common or usual name. The names of ingredients should not

be used in advertising, labeling, brand or trade name, or otherwise, so as to misrepresent directly or by implication the identity of an ingredient or the composition of an industry product. [Guide 2]

§ 241.3 Misrepresentation in general.

Industry members should not use or cause or promote the use of any promotional materials, advertising, labels, insignia, brand or trade names which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers:

(a) With respect to the composition, substance, content, identity, quantity, appearance, consistency, form, shape, color, flavor, cost, value, origin, grade, quality, suitability, nutritional properties, methods of manufacture, manner of processing, or novelty of an industry product or ingredient thereof; or

(b) In any other material respect. [Guide 3]

§ 241.4 Misrepresenting composition, form, suitability, or quality in labeling.

An industry member should not use on the label of an industry product a statement of identity, vignette, or any other representation, pictorial or otherwise, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to the composition, form, suitability, quality, color, or flavor of the product or any of its ingredients. More specifically:

(a) A label should contain sufficient information to enable a purchaser or prospective purchaser to determine the nature and composition of the product and the purposes for which it is suitable. As a prospective purchaser usually cannot ascertain by inspection whether an industry product will satisfy all of the nutritional requirements of a dog or cat, labeling respecting a product which is suitable only for particular purposes, e.g., as an intermittent or supplemental food, a special food for puppies, a protein supplement, or as a maintenance food for mature dogs, or is otherwise not a complete food, should not contain direct or implied representations which are misleading with respect to

the purposes for which the product is suitable. To avoid misleading prospective purchasers in this respect it is generally necessary to disclose clearly and conspicuously the particular purposes for which the product is suitable or that the product is not a complete food.

(b) When used as part of a product name or statement of identity, the name of a particular ingredient should not be set forth in such a manner as to mislead prospective purchasers into believing that there is a greater proportion of such ingredient in the product than there is in fact. For example, if a product is composed of 80 percent meat byproducts and 15 percent beef, and 5 percent other ingredients, and is designated as "meat by-products and beef", the word "beef" in the product name or statement of identity should not be more conspicuous than the words "meat by-products." [Guide 4]

§ 241.5 Misrepresenting composition, form, suitability, or quality in advertising.

An industry member should not make any representation in an advertisement¹ which has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the composition, appearance, form, suitability or quality of an industry product or of any ingredient thereof. More specifically:

(a) A product should not be described in advertising as "all meat" or "100 percent meat," or "all tuna," or "all chicken," or otherwise represented as being composed wholly of a named ingredient if it contains other ingredients such as the byproducts of meat, poultry, or fish. However, for the purpose of this provision, water sufficient for processing, required de-

characterizing agents, and trace amounts of preservatives and condiments shall not be considered ingredients.

(b) The name or names of ingredients derived from animals, poultry or fish, such as "meat," "beef," "tuna," or "chicken and eggs" should not be used as a complete description of the composition of an industry product unless the product contains at least 95 percent by weight of the named ingredient or combination of such ingredients. If the product contains more than one ingredient derived from animals, poultry, or fish, the name of a preferred ingredient should not be given precedence or undue prominence so as to create the impression that the product contains a greater amount of that ingredient than it does in fact. For example, if a product contains 70 percent eggs and 25 percent chicken it should be described as "eggs and chicken."

(c) The names of ingredients derived from animals, poultry or fish or words or terms suggestive thereof, or representations that a product contains such ingredients, should not be used in advertising respecting an industry product unless the ingredients so named, represented, or suggested are present in the product in substantial amounts and the name, word, term, or representation is accompanied by a clear and conspicuous disclosure of the nature of the other ingredients contained in the product. The disclosure contemplated by this provision does not necessitate a complete listing of ingredients but only such description as is necessary to remove any likelihood of deception as to the general nature and composition of the product. However, no ingredient should be given undue emphasis so as to create the impression that it is present in the product in a larger amount than is the fact. This provision is not intended to preclude the use of such names or terms as descriptive of the flavor of a product which has the flavor represented and is immediately followed by the word "flavor" (see § 241.7 of this part), or to affect the use in advertising of product names or statements of identity which conform to the provisions of § 241.4 of this part. The fol-

¹ The word "advertising" or "advertisement" as used in this part includes any written or verbal statement, notice presentation, illustration, or depiction, other than labeling, which is directly or indirectly designed to effect the sale of any industry product, or to create an interest in the purchase of any such product, whether same appears in a newspaper, magazine, or other periodical, in a catalog, letter, or sales promotional literature, in a radio or television broadcast, or in any other media.

lowing are examples of appropriate disclosures under this paragraph:

(1) "A meaty mixture of vegetables, cereals, and other nutritional ingredients."

(2) "Contains cereals, vegetables, and meat."

(d) Such terms as "stew," "hash," or other human food terms should not be used to describe an industry product or an ingredient thereof which is not so constituted as to conform to Federal standards of identity established for such foods. However, the specified percentages of meat, poultry, or fish ingredients may properly be composed of the named ingredient or of a combination of that ingredient and the parts of poultry or fish, or the byproducts of animals, poultry, or fish from which the ingredient was derived. For example, a product described as "Meat Stew for Dogs" should contain not less than 25 percent meat and meat by-products, or a product described as "Chicken Stew for Dogs" should contain not less than 25 percent chicken and chicken parts, or a product described as "Pet Stew for Dogs" should contain not less than 25 percent meat and meat by-products, or poultry products, and a variety of vegetables and other nutritional ingredients.

(e) Representations that a product contains or is fortified with fresh eggs should not be made if the product in fact contains no fresh eggs or an inappreciable amount thereof, or only dried or powdered eggs or egg yolks or egg whites, or only such eggs as may be found in the carcasses of poultry.

(f) Representations that an industry product contains whole fresh milk should not be made if the product in fact contains reconstituted milk, skimmed milk, buttermilk, or dry powdered whole or skimmed milk.

(g) Representations that a product or an ingredient thereof is "moist in its own juices" or otherwise that the moisture therein is the natural juices contained in the product or ingredients should not be made if water or other liquids have been added thereto.

(h) Vignettes and graphic and pictorial illustrations of an industry product or the contents, ingredients on immediate container thereof, which have the capacity and tendency or effect of

misleading or deceiving purchasers or prospective purchasers with respect to the appearance, substance, condition, or composition of the product or its ingredients should not be used. A pictorial or other depiction of a product which has the appearance of being composed entirely of meat or of other ingredients derived from animals, poultry or fish, but which in fact is not so composed, should be accompanied by a clear and conspicuous disclosure of the nature of the ingredients contained in the product.

(i) Terms such as "burger," "chunk," "patty," "cubes," "loaf," "croquettes," and others of similar import, should not be used to describe a product or an ingredient thereof which does not have substantially the shape or form so represented when it is sold to the retail purchaser. Terms denoting shape or form which also suggest ingredients derived from animals, poultry, or fish are subject to the provisions of this part relating to misrepresentation of content.

(j) The quality of an industry product from the nutritional standpoint is not necessarily dependent upon its meat content, or upon the amount or nature of other ingredients derived from animals, poultry or fish which it may contain. Accordingly, it is improper to represent that a dog or cat has a nutritional requirement for such an ingredient, or that solely because a particular industry product contains, for example, a specified percentage of meat it is nutritionally superior to products having a lesser quantity of meat, or to those which contain other and different ingredients. Such advertising is deceptive because it does not take into consideration the nutritional properties of various ingredients or combinations thereof used in the formulation and processing of industry products.

(k) Representations or claims by an industry member that a product is superior to other products from the standpoint of quality, composition, nutritional properties or method of manufacture should not be made unless the advertiser has established on the basis of accurate comparative analyses or scientifically valid tests that such is the fact. Comparatives such as "meati-

er," "higher meat protein," and "greater meat content" should not be used as descriptive of an industry product or an ingredient thereof without disclosing the basis of comparison, e.g., "meatier than our other products."

(l) It is deceptive to offer for sale or sell an industry product which is not suitable for use as a food for dogs or cats. As a prospective purchaser usually cannot ascertain by inspection whether an industry product will satisfy all of the nutritional requirements of a dog or cat, advertising respecting a product which is suitable only for particular purposes, e.g., as an intermittent or supplemental food, a special food for puppies, a protein supplement, or as a maintenance food for mature dogs, or is otherwise not a complete food, should not contain direct or implied representations which are misleading with respect to the purposes for which the product is suitable. To avoid misleading prospective purchasers in this respect it is generally necessary to disclose clearly and conspicuously the particular purposes for which the product is suitable or that the product is not a complete food. This disclosure is especially necessary where in the absence thereof purchasers would be led by the advertising to believe that the product is nutritionally complete.

(m) Advertising should not contain any representation with respect to the identity, composition, or suitability of any industry product or an ingredient thereof, which contradicts, negates or is otherwise inconsistent with any representation, statement, direction for use, or other information which appears in the labeling of such a product.

(n) In advertisements pertaining to more than one of its products an industry member should use only such terms as are properly applicable to all of the products so advertised, unless the advertisement specifically identifies the particular products to which certain representations are applicable. For example, if "Y Company" has on the market an "all meat" product for dogs, an "all tuna" products for cats, and two separate, complete ration-type foods for dogs and cats respec-

tively, it should not in a single advertisement represent that Y products are complete foods, or that they are "all meat." [Guide 5]

§ 241.6 Misrepresentation of color in advertising.

An industry member should not misrepresent directly or indirectly, in advertising, the actual color of an industry product. More specifically, it should not represent that the color of a product is its natural color when such color has been established by artificial means; or that a product does not contain an artificial coloring ingredient unless this is true in fact; or that the color of a product is of any particular significance to a dog or to a cat. [Guide 6]

§ 241.7 Misrepresentation of flavor in advertising.

An industry member should not represent directly or indirectly, in advertising, that a product has a particular flavor unless the product has that flavor and the designated or named flavor is detectable by a recognized test method, or provides a characteristic distinguishable by the animal for which the product is intended. If the advertisement contains representations respecting flavor and the flavor has been derived from artificial sources that fact should be disclosed. [Guide 7]

§ 241.8 Diet and nutrient misrepresentation.

An industry member should not represent directly or indirectly, in advertising, labeling, brand or tradename, or otherwise:

(a) That an industry product, or a recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific, or balanced ration for dogs or cats unless such product or feeding:

(1) Contains ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as The Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences; or

(2) Contains a combination of ingredients which, when fed to a normal animal as the only source of nourishment, will provide satisfactorily for fertility of the male and female, gestation and lactation, normal growth from weaning to maturity without supplementary feeding and will maintain the normal weight of an adult animal whether working or at rest, and has had its capabilities in this regard demonstrated by adequate testing.

(b) That any listing of nutrients is equal to or exceeds the amounts recommended by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, unless such listing utilizes the same units of measure, and lists in equal or excess amounts all of the essential nutrients contained in the most recent nutrient list of that authority; or

(c) That a product or ingredient thereof contains vitamins, minerals, or other nutrients in excess of the actual content thereof, as for example, by comparing the vitamins, minerals, or other nutrients of a product or ingredient thereof with the nutrient content of a food deficient in such nutrients; or

(d) That any product or ingredient thereof provides "super protein richness," or a complete source of protein in that it contains the essential body building amino acids, inferably in the proper amount and proportion for proper nutrition, when such is not the fact. [Guide 8]

§ 241.9 Misrepresentation of medicinal and therapeutic benefits.

An industry member should not represent directly or indirectly in advertising, labeling, brand or trade name, or otherwise, that a product or ingredient thereof will:

(a) Prevent, cure, correct, tend to correct, eliminate, remove, or provide resistance to any disease, condition, disorder, infection, or parasite, or in any way improve the health or condition of any animal, when such is not the fact; or

(b) Provide any therapeutic benefit which it is capable of providing only in

instances where the consuming animal's ordinary diet is deficient in elements supplied by the product or ingredient, unless due notice or qualification is made to that effect. [Guide 9]

§ 241.10 Human food representation.

An industry member should not misrepresent directly or indirectly, in advertising, labeling, brand or trade name or otherwise, that a product is fit for human consumption or made under the same sanitary conditions as food for humans. [Guide 10]

§ 241.11 Misrepresentation of processing methods.

An industry member should not, in advertising, labeling or otherwise, misrepresent the methods used in the manufacture or processing of an industry product. More specifically: Representations that a product has been broiled, braised, baked, or otherwise cooked, preserved or processed in a specific manner should not be made unless such is the fact. As the word "canned" when applied to an industry product may constitute a representation as to the manner in which a product has been processed as well as to the nature of the container in which it is packaged, a product should not be described without qualification as "canned" unless it has been both thermally processed and packed in a can. [Guide 11]

§ 241.12 Defamation of competitors or false disparagement of their products.

An industry member should not directly or indirectly in advertising, labeling, or otherwise:

(a) Engage in the defamation of its competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by making other false representations about them; or

(b) Falsely disparage the quality, grade, origin, appearance, composition, suitability, nutritional properties, cost, value, type, consistency, form, color, flavor, method of manufacture, manner of preparation, or lack of novelty of its competitors' products. [Guide 12]

§ 241.13 Misrepresentation of the character and size of business, extent of testing, etc.

An industry member should not misrepresent directly or indirectly in company, brand or trade name, or in advertising, labeling, or otherwise:

- (a) The length of time it has been in business; or
- (b) The extent of its sales; or
- (c) Its rank in the industry as a producer or distributor of a product or type of product; or
- (d) That it is a manufacturer or packer of industry products; or
- (e) That it owns or operates a laboratory, breeding or experimental kennel, or that its products have been tested in any particular manner or for any period of time or with any particular results; or
- (f) That a product, ingredient, or manufacturing process is new or exclusive; or
- (g) Any other material aspect of its business or products. [Guide 13]

§ 241.14 Deceptive endorsements, testimonials, and awards.

An industry member should not deceptively represent directly or indirectly by endorsement, testimonial, award, advertising, labeling, brand or trade name, or otherwise:

- (a) That a product or ingredient thereof has been prepared according to the formula, direction, or personal supervision of, or is prescribed by, or is the first choice of, or has been inspected, guaranteed, recognized, approved or used by; or meets or exceeds the specifications or standards of; or is otherwise endorsed by a particular individual or class of individuals, or by a governmental or nongovernmental agency, or by professionals such as veterinarians, chemists, physicists, or psychiatrists, or by organizations, breeders, kennels, sportsmen, hunt clubs, or animal hospitals; or
- (b) That a product is the recipient of a bona fide merit award or seal of approval; or
- (c) That a product or an ingredient thereof has been inspected by the U.S. Government or any agency thereof and that it has passed that inspection. [Guide 14]

§ 241.15 Bait advertising.

An industry member should not offer for sale any industry product when the offer is not a bona fide effort to sell the product so offered as advertised and at the advertised price.

NOTE: 1. In determining whether there has been compliance with this section, consideration will be given to acts or practices indicating that the offer was not made in good faith for the purpose of selling the advertised product, but was made for the purpose of contacting prospective purchasers and selling them a product or products other than the product offered. Among acts or practices which will be considered in making that determination are the following:

- (a) The creation, through the initial offer or advertisement, or a false impression of the product offered in any material respect;
- (b) The refusal to show, demonstrate or sell the product offered in accordance with the terms of the offer;
- (c) The disparagement by acts or words of the product offered or the disparagement of the guarantee, or in any other respect in connection with it;
- (d) The showing, demonstrating, and in the event of sale, the delivery of a product which is unsuitable for the purpose represented or implied in the offer;
- (e) The failure, in the event of sale of the product offered, to deliver such product to the buyer within a reasonable time thereafter;
- (f) The failure to have available a quantity of the advertised product at the advertised price sufficient to meet reasonably anticipated demands.

It is not necessary that each act or practice set forth above be present in order to establish that a particular offer does not comply with this section.

NOTE: 2. The Commission's Guides Against Bait Advertising furnish additional guidance respecting bait advertising. See 16 CFR Part 238 for the Guides Against Bait Advertising.

[Guide 15]**§ 241.16 Guarantees, warranties, etc.**

(a) An industry member should not represent in advertising or otherwise that a product is guaranteed without clear and conspicuous disclosure of:

- (1) The nature and extent of the guarantee; and
- (2) Any material conditions or limitations in the guarantee which are imposed by the guarantor; and

(3) The manner in which the guarantor will perform thereunder; and

(4) The identity of the guarantor. (The necessary disclosure requires that any guarantee made by the dealer or vendor which is not backed up by the manufacturer must make it clear that the guarantee is offered by the dealer or vendor only.)

(b) A seller or manufacturer should not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

(c) A specific example of refusal to perform obligations under the guarantee would arise in connection with the use of the phrase "Satisfaction or your money back" if the guarantor does not promptly make a full refund of the purchase price upon request, irrespective of the reason for such a request.

(d) This section has application not only to "guarantees" but also to "warranties," to purported "guarantees" and "warranties," and to any promise or representation in the nature of a "guarantee" or "warranty."

NOTE: The Commission's Guides Against Deceptive Advertising of Guarantees furnish additional guidance respecting guarantee representations. See 16 CFR Part 239 for Guides Against Deceptive Advertising of Guarantees.

[Guide 16]

§ 241.17 Deceptive pricing.

An industry member should not represent directly or indirectly in advertising or otherwise that an industry product may be purchased for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive purchasers or prospective purchasers with respect to the price of any product offered for sale; or furnish any means or instrumentality by which others engaged in the sale of industry products may make any such representation.

NOTE: The Commission's Guides Against Deceptive Pricing furnish additional guidance respecting price savings representations. See 16 CFR Part 233 for the Guides Against Deceptive Pricing.

[Guide 17]

PART 242—GUIDE AGAINST DECEPTIVE USE OF THE WORD "FREE" IN CONNECTION WITH THE SALE OF PHOTOGRAPHIC FILM AND FILM PROCESSING SERVICE

§ 242.1 The guide.

(a) A common form of bargain advertising used to promote the sale of photographic film processing service is the offer of a roll of film, represented as being free to consumers who purchase a particular advertiser's service.

(b) Film processors should avoid representing film as "free" when their quoted price for processing is not their regular price for such service, or, when the price charged for processing in connection with the "free" film representation is in excess of the price regularly charged by them for processing alone. A regular price is the price at which an article or service is openly and actively sold by the advertiser to the public on a regular basis for a reasonably substantial period of time in the recent and regular course of business. A price which (1) is not the advertiser's actual selling price, (2) is a price which was not used in the recent past but at some remote period in the past, or (3) is a price which has been used only for a short period of time, is not a regular price. Consequently, use of any price or amount, other than the advertiser's own bona fide regular price, in connection with a "free" film representation is deceptive.

(c) "Free" film offers are understood by consumers to mean that the price charged by the advertiser is for processing alone and has not been raised to include any payment for the film. In other words, they understand that the film, in fact, is a gift to the consumer given by the advertiser in return for the processing business he receives. In such circumstances, if any portion of the represented price charged for processing includes any payment for the film to the processor, the "free" film offer is deceptive and consumers are misled.

(d) Where a processor has not established a regular price for processing service by itself, he has no basis, except in the case of introductory offers, upon which to make a "free"

film representation. Likewise, a processor may not justify "free" film offers, whether advertised with or without qualification, on the ground that his price for processing and film is equal to or less than the price charged by local developers for processing alone, in a given trade area. Only the processor's own regular processing price may be used as a basis for the "free" film representation.

(e) Continuous free film offers or the repetition of such offers with great frequency should be avoided. Continuous or frequent offers of free film made in connection with the sale of processing service are false and misleading since the processor's price for his service alone will, by lapse of time, become his regular price for processing service and film in combination. The film, in such circumstances, would therefore no longer be "free".

(f) Introductory (temporary) offers of "free" film should not be advertised where processors do not, in good faith, expect to discontinue the offer after a limited time and commence selling processing service separately at the same price at which the offer of such service, together with the "free" film, was made.

(g) The guide does not preclude the use of nondeceptive "combination" offers in which film and processing are offered for sale as a single unit at a single stated price, and where no representation is made that the price is to be paid for one item and the other is "free". Similarly, film processors are not precluded from setting a price for processing which also includes furnishing the purchaser with a replacement roll of film at one inclusive price—again, where no representation is made that the latter is "free".

NOTE: On December 1, 1953, the Commission approved a trade practice rule on use of the word "Free". The provisions of the guide set forth above are advisory in nature and are not to be construed as replacing or modifying any of the provisions of the aforementioned trade practice rule.

[38 Stat. 717, as amended; 15 U.S.C. 41-58]

[33 FR 8336, June 5, 1968]

PART 243—GUIDES FOR THE DECORATIVE WALL PANELING INDUSTRY

Sec.

- 243.0 Definitions.
- 243.1 Avoiding deception generally.
- 243.2 Describing wood and wood imitations.
- 243.3 Deceptive use of wood names.
- 243.4 Imitations of materials other than wood.
- 243.5 Misleading illustrations.
- 243.6 Deceptive use of trade or corporate names, coined names, trademarks, etc.
- 243.7 Passing off through imitation or simulation of trademarks, trade names, etc.
- 243.8 Disclosure of "seconds", "rejected", or "defective" products, etc.
- 243.9 Representations concerning washability/cleanability, etc.
- 243.10 Size markings and designations.
- 243.11 Removal, obliteration, or alteration of marks or labels.
- 243.12 Misrepresenting products as conforming to standard or specification.
- 243.13 Deception as to origin.
- 243.14 Other parts in this Title 16 applicable to this industry.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

SOURCE: 36 FR 23796, Dec. 15, 1971, unless otherwise noted.

§ 243.0 Definitions.

For the purpose of this part the following definitions shall apply:

(a) *Industry member.* Any person, firm, corporation, or organization engaged in the manufacture, sale or distribution of industry products as such products are hereinafter defined.

(b) *Industry products.* Industry products include all products, whether of domestic or foreign origin, which are suitable for use as interior decorative wall panels. Industry products may be composed of any material or combinations of materials including, but not limited to, solid wood, plywood, wood products, plastics, metals, etc., and may be textured, prefinished, partially finished, or unfinished.

(c) *Exposed surface, front or face.* An "exposed surface" of a decorative wall panel is the one prominently exposed to view when the product is placed in the generally accepted position for use. The "exposed surface" is often re-

ferred to as the "front" or "face", as contrasted to the back of a panel.

(d) *Back*. The back of a decorative wall panel is the surface reverse to the face. The back is not generally intended to provide an esthetically pleasing appearance and, therefore, is not considered an "exposed surface" under the definition immediately above. However, these definitions do not preclude unusual construction giving a panel two exposed surfaces or faces.

(e) *Veneer*. In this part, the term "veneer" is used in the sense most commonly understood by ordinary consumers—namely, to describe a thin layer of more valuable or beautiful wood used on the face of a panel for overlaying an inferior wood or other core material.

§ 243.1 Avoiding deception generally.

(a) *In general*. Industry members should not sell, offer for sale, or distribute industry products by any method, or under any representation, circumstance, or condition which has the capacity and tendency or effect of misleading purchasers or prospective purchasers as to the grade, type, kind, character, content, construction, composition, process, or technique used in preparation or fabrication, origin, size, thickness, quality, quantity, value, price, serviceability, resistance, performance, durability, color, finish, manufacture, or distribution of any product of the industry or component part of such product, or in any other respect.

(b) *Basis for affirmative disclosures of facts*. (1) Many of the following sections set forth specific examples as to when affirmative disclosures should be made in advertising and on labels. In order to prevent deception the Commission may require affirmative disclosure of material facts concerning merchandise which, if known to prospective purchasers, would influence their decisions of whether or not to purchase. The failure to disclose such facts as may be required is an unfair trade practice violative of the Federal Trade Commission Act.

(2) Two of the most prevalent situations in which disclosures should be made are (i) when the appearance of a wall panel could mislead purchasers or

potential purchasers as to its true composition, and (ii) when a representation is made in any manner which is susceptible of at least one misleading interpretation unless it is clearly qualified. Representations which cannot be qualified without the qualification amounting to a contradiction should not be used.

(c) *Manner of making disclosures on products and in advertising*. (1) Retail dealers, manufacturers, and other suppliers must all assume the affirmative responsibility to provide detailed information to the public concerning the compositions of wall panels through informative advertising, promotional materials, and properly labeled products and samples thereof.

(2) When disclosures are necessary on industry products, they should appear on each product (except when sold and used for industrial purposes and the industrial purchaser is otherwise fully informed of the material facts involved). Such disclosures should be on the product, or on a tag or label attached thereto, and be of such permanency as to remain on, or attached to, the product until consummation of sale to the ultimate purchaser. Conspicuous disclosures may appear on backs of wall panels, but in instances where such disclosures would not be readily noticeable to casual observers, such as on certain point-of-sale display panels where the backs are not easily viewed, disclosures should be made on the front or face of panels.

(3) When disclosures are necessary in advertising, they should be made in any advertisement relating to an industry product irrespective of the form or media used whenever statements, representations or depictions appear therein which, in the absence of such disclosures, could serve to create a false impression that the product, or any part thereof, is of a certain kind, size, quality or composition.

(4) In all cases, disclosures should be in immediate conjunction with any representation, depiction, illustration, simulation, or display making it necessary, and should be of sufficient clarity and conspicuousness to be noted by prospective purchasers. The number

of times a disclosure should be made will depend entirely upon the context in which it appears.

(5) When disclosures are necessary to describe composition, they may be accomplished by stating the true composition (e.g., "mahogany grained hardboard", "walnut grain finish on plastic", "reproduction of wood grain on plastic overlay" or "printed vinyl overlay on plywood"), or by making a disclaimer of composition (e.g., "imitation wood surface", "simulated wood finish" or "simulated grain design"). Of course, a representation concerning the composition of a product should clearly indicate the part to which the representation is properly applicable.

NOTE: For examples of when disclosures should be made, see the following sections.

[Guide 1]

§ 243.2 Describing wood and wood imitations.

In connection with the sale of industry products made of wood, or which are not wood but have an appearance simulating wood, industry members should not use any display, exhibit, sample, sales method, depiction or representation which could have the capacity and tendency directly or indirectly to mislead purchasers or potential purchasers because of: A false statement; a half-truth; or the failure to disclose facts concerning composition when the appearance of a product could convey a misleading impression.¹

(a) Examples of representations considered false include:

(1) Describing an oak panel as "pecan";

(2) Describing as "solid birch" or "genuine birch" a panel made with laminations of all birch plies. Proper descriptions would include "birch plywood" or "birch plies";

(3) Describing a particleboard, flakeboard, hardboard, fiberboard, chipcore or plywood panel as "solid wood";

(4) Describing as "natural wood grain" a simulated grain design which has been printed on, attached to or simulated in any other manner on the surface of an industry product;

(5) Describing a nonlumber product, such as particleboard, hardboard, fiberboard, flakeboard, and products of similar composition, as "wood". Although such products are composed of wood particles or wood fibers, they should not be represented without qualification as "wood" but may be described as "particleboard", "hardboard", "fiberboard", "wood product", or by any applicable nondeceptive word or term.

(b) Examples of representations considered likely to mislead because of a half-truth include:

(1) Describing as "walnut", "in walnut", "genuine walnut", "walnut panel" or "walnut plywood" a panel having only a face veneer of walnut. Proper descriptions would include "walnut veneer face", "walnut veneer surface", "walnut veneer" or "walnut veneered plywood".

NOTE: Unqualified terms such as "walnut", "genuine walnut" and "in walnut" imply that the product so described is solid walnut. Unqualified terms such as "walnut plywood" imply that all of the plies are walnut.

(2) Describing as "walnut veneer" a panel having a face veneer not entirely of walnut. If a wood name is used to describe a panel having more than one kind of wood in the face veneer then all of the woods in the face veneers should be named or otherwise identified (e.g., "walnut and cherry veneers" or "walnut and other hardwood veneers");

(3) Using unqualified phrases such as "wood-pattern" or "woodgrain finish" to describe a panel having a wood surface which has been stamped, rolled, pressed, or otherwise processed in such manner as to change the natural wood grain design. Proper descriptions would include "simulated wood-grain finish", "imitation grain figure" or "simulated walnut grain finish on birch face veneer";

(4) Describing as "hardwood plywood" a panel made of hardwood plywood but having a vinyl film surface simulating a wood finish. Proper descriptions would include "hardwood plywood with simulated wood grain on vinyl overlay" or "simulated wood surface on plywood".

¹See paragraphs (b) and (c) of § 243.1.

(c) Examples of failure to disclose facts concerning composition when the appearance of industry products could convey a misleading impression include circumstances such as when a product, or part thereof, is: Wood but has the appearance of a different kind of wood; and Not wood but has an appearance simulating wood. For instance, when necessary to prevent possible deception an affirmative disclosure should be made of the facts concerning composition when an industry product, or part thereof:

(1) Has an exposed surface of plastic, metal, vinyl, hardboard, particle-board or other material not possessing a natural wood grain structure but which has an appearance simulating that of a wood grain. Depending on the composition, proper descriptions would include "simulated walnut finish on plastic face", "vinyl surface with simulated pecan finish", "simulated birch finish on hardboard", "mahogany grained plastic", or other nondeceptive phrases;

(2) Has a wood surface finished by means of staining, decalcomania, printing, paper coating or other process so as to have the appearance of a different kind of wood. Depending on the composition, proper descriptions would include "mahogany finished gum plywood", "walnut stained plywood", "walnut finish on pecan veneer face", or "cherry grain design on hardwood plywood";

(3) Has an appearance which could mislead potential purchasers in any material respect.

(d) Examples of wood names to describe color, grain design, etc.:

(1) When a wood name is used in advertising or labeling to describe the grain and/or color of a stain finish or other type of simulated finish which has been applied to a surface composed of something other than solid wood of the type named, it should be made clear that the wood name used is merely descriptive of the grain design and/or color or other simulated finish.

(2) Under this section, unqualified phrases such as "walnut", "walnut finish", "in walnut", "fruitwood", "oak", "mahogany finish", and other terms of similar import or meaning, will not be adequate. But statements

such as "walnut stain", "maple stain finish", "mahogany finish on gum", "photographically reproduced pecan grain", "printed pecan design", "fruitwood finish on selected hardwood veneer", "cherry grain finish on vinyl overlay" and "walnut finish on other hardwoods" (or "softwoods", as the case may be) will satisfy this provision if such statements are factually correct and appear in contexts which are otherwise nondeceptive.²

[Guide 2]

§ 243.3 Deceptive use of wood names.

Industry members should not use any direct or indirect representation concerning the identity of the wood in industry products that is false or likely to mislead purchasers as to the actual wood composition.

(a) *Walnut*. The unqualified term "walnut" should not be used to describe wood other than genuine solid walnut (genus *Juglans*). The term "black walnut" should be applied only to the species *Juglans nigra*.

(b) *Mahogany*. (1) The unqualified term "mahogany" should not be used to describe wood other than genuine solid mahogany (genus *Swietenia* of the *Meliaceae* family). The woods of genus *Swietenia* may be described by the term "mahogany" with or without a prefix designating the country or region of its origin, such as "Honduras mahogany", "Costa Rican mahogany", "Brazilian mahogany" or "Mexican mahogany".

(2) The term "mahogany" may be used to describe solid wood of the genus *Khaya* of the *Meliaceae* family, but only when prefixed by the word "African" (e.g., "African mahogany").

(3) In naming or designating the seven nonmahogany Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis, and Bagtikan, the term "mahogany" may be used but only when prefixed by the word "Philippine" (e.g., "Philippine mahogany"), due to the long standing usage of that term. Examples of improper use of the term "mahogany" include reference to Red Lauan as "Lauan mahogany" or to White Lauan

² See paragraphs (b) and (c) of § 243.1.

as "Blond Lauan mahogany". Such woods, however, may be described as "Red Lauan" or "Lauan" or "White Lauan", respectively. The term "Philippine mahogany" will be accepted as a name or designation of the seven woods named above. Such term shall not be applied to any other wood, whether or not grown on the Philippine Islands.

(4) The term "mahogany", with or without qualifications, should not be used to describe any other wood except as provided above. This applies also to any of the woods belonging to the Meliaceae family, other than genera *Swietenia* and *Khaya*.

(c) *Maple*. The terms "hard maple", "rock maple", "bird's-eye maple", "Northern maple" or other terms of similar nature should not be used to describe woods other than those known under the lumber trade names of Black Maple (*Acer nigrum*) and Sugar Maple (*Acer saccharum*).

NOTE: Nothing in this section should be construed as prohibiting the nondeceptive use of wood names to describe the color, stain, simulated finish, or appearance of industry products; *Provided*, That appropriate qualifications are made in accordance with provisions in § 243.2(a).

[Guide 3]

§ 243.4 Imitations of materials other than wood.

Industry members should not misrepresent the composition of any industry product, or part thereof, or fail to disclose any material fact concerning the composition of an industry product when the failure to do so has the capacity and tendency or effect of deceiving purchasers or prospective purchasers.¹ For example:

(a) A hardboard panel having an imitation marble finish should not be described without qualification as "marble", "onyx", "travertine" or "travertine marble finish". Proper descriptions would include "simulated marble finish", "imitation marble-textured", "marble pattern on plastic faced hardboard", "simulated travertine on hardboard", "marble pattern

on vinylfaced hardboard" or other nondeceptive terms;

(b) A fiberboard panel having an imitation burlap finish should not be described without qualifications as "burlap" or "burlap finish". Proper descriptions would include "imitation burlap weave finish", "simulated burlap design on fiberboard", "simulated burlap finish on fiberboard", "burlap pattern on embossed vinyl surface" or other nondeceptive terms. [Guide 4]

§ 243.5 Misleading illustrations.

Industry members should not use any picture, illustration, diagram or other depiction, either alone or in conjunction with words or phrases, which would have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning any material fact relating to an industry product. For example, if an advertisement showed installed panels with the color and graining characteristic of walnut, but the paneling being offered was not genuine solid walnut, then the advertisement should contain a clear and conspicuous disclosure of the composition of the product being offered (e.g., "walnut veneer plywood", "engraved walnut grain design on selected hardwood plywood", or "simulated walnut finish on hardboard").³

[Guide 5]

§ 243.6 Deceptive use of trade or corporate names, coined names, trademarks, etc.

Industry members should not use any trade name, product name, corporate name, coined name, trademark or other trade designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the character, name, nature, composition, or origin of any industry product, or of any material used therein, or which is false or misleading in any other material respect. [Guide 6]

¹ See paragraphs (b) and (c) of § 243.1.

§ 243.7 Passing off through imitation or simulation of trademarks, trade names, etc.

Industry members should not pass off the products of one industry member as and for those of another through the imitation or simulation of trademarks, trade names, brands, labels or otherwise. [Guide 7]

§ 243.8 Disclosure of "seconds", "rejected" or "defective" products, etc.

Industry products which are not of first quality should be legibly marked or labeled in a clear and conspicuous manner as "second", "rejected", "defective", or "blemished", as the case may be, or by some other term which clearly and conspicuously make known to purchasers, or potential purchasers viewing the products, the fact that they are not of first quality. Also, such products should not be advertised in any manner without a clear and conspicuous disclosure that the products are not of first quality. Such disclosures should conform with provisions of paragraphs (b) and (c) of § 243.1 of this part. [Guide 8]

§ 243.9 Representations concerning washability, cleanability, etc.

Industry members should not directly or indirectly misrepresent the manner in which the exposed surfaces of prefabricated industry products may be washed, cleaned, or otherwise maintained, or fail to clearly and conspicuously disclose the manner in which exposed surfaces may be washed, cleaned, or otherwise maintained without adverse effects whenever representations are made concerning such matters. [Guide 9]

§ 243.10 Size markings and designations.⁴

Industry members should not:

(a) Mark or otherwise represent, directly or by implication, an industry product as being of a certain size

⁴ Officially established Commercial Standards and Product Standards concerning the various industry products are recognized as giving proper guidance for determining dimensions of industry products (e.g., CS157-56; CS176-58; CS35-61; CS251-63; CS236-66; and PS1-66; and amendments or revisions thereof).

unless it has the dimensions represented; or

(b) Fail to disclose in advertising and on industry products the true size thereof when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the size of such products. For example, consumers generally assume that decorative wall panels are 4' x 8' x 1/4" when advertised without disclosure of dimensions. Therefore, if the dimensions of advertised panels are less than 4' x 8' x 1/4", an affirmative disclosure of the correct size should be made.⁵

[Guide 10]

§ 243.11 Removal, obliteration, or alteration of marks or labels.

Industry members should not:

(a) Remove, obliterate, deface, change, alter, conceal, or make illegible any information this part provides be disclosed on industry products, without replacing the same before sale, resale or distribution for sale with a proper mark or label meeting the provisions of this part; or

(b) Sell, resell, or distribute any industry product without its being marked or labeled and described in accordance with the provisions of this part. [Guide 11]

§ 243.12 Misrepresenting products as conforming to standard or specification.

Members of the industry should not misrepresent in advertising, labeling, or otherwise, that any product conforms to any applicable standard or specification. [Guide 12]

§ 243.13 Deception as to origin.

(a) Industry members should not make any direct or indirect representation which is false or likely to mislead prospective purchasers concerning the origin of either domestic or foreign industry products, or any substantial parts thereof.

(b) Industry members should clearly and conspicuously disclose that industry products, or any substantial parts thereof, were produced or manufac-

⁵ See paragraphs (b) and (c) of § 243.1.

tured in an identified foreign country when the failure to make such disclosure has the capacity and tendency or effect of deceiving prospective purchasers. Such disclosures should be in the form of a legible mark, stamp or label on the product, and any samples thereof, and should be of such size, conspicuousness and permanency as to remain noticeable and legible upon casual inspection until consumer purchase. [Guide 13]

§ 243.14 Other parts in this Title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, Part 233, Guides Against Deceptive Advertising of Guarantees, Part 239, and Guides Against Bait Advertising, Part 238, all of which have general application and furnish additional guidance for members of the Decorative Wall Paneling Industry. Members of this industry should comply with those parts.

PART 244—GUIDES FOR THE GREETING CARD INDUSTRY RELATING TO DISCRIMINATORY PRACTICES

Sec.

244.0 Definitions.

244.1 Price discriminations in general.

244.2 Promotional assistance.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46; 49 Stat. 1526; 15 U.S.C. 13, as amended, unless otherwise noted.

SOURCE: 33 FR 16634, Nov. 15, 1968, unless otherwise noted.

§ 244.0 Definitions.

For purposes of this part the following definitions will apply:

(a) "Greeting card" means any commercial form of card, sheet, or folder which conveys a greeting or similar type of message by means of printed reading matter or pictorial matter. The term includes "chromos" which contain pictures but no words, and also, cards which contain words but no pictures.

(b) "Publisher" means any person, firm, partnership, corporation, or any other organization which has greeting cards printed or packaged, whether in its own plant or other plant, for sale exclusively by it. It does not include

the printer or packager unless he acts for his own account.

(c) "Distributor" means any person, firm, partnership, corporation, or any other organization that purchases greeting cards for resale to parties other than the ultimate consumer. This includes wholesalers, jobbers, and all other intermediaries other than retailers.

(d) "Supplier" means any greeting card publisher or distributor.

(e) "Retailer" means any seller of greeting cards to the ultimate consumer, such as card shops, drug stores, discount houses, department stores, etc.

(f) "Competing customers" means, for purposes of § 244.2 of this part entitled "Promotional Assistance", all businesses that compete in the resale of the supplier's greeting cards at the same functional level of distribution regardless of whether they purchase direct from the supplier or through some intermediary (e.g., direct buying retailers and retailers that purchase through wholesalers and compete with the direct buying retailers).

(g) "Commerce"—this has not been precisely defined in the statute. In general, if there is any part of a business which is not wholly within one State (for example, sales or deliveries of products, their subsequent distribution or purchase, or delivery of supplies or raw materials), the business may be subject to section 2 of the amended Clayton Act and/or section 5 of the Federal Trade Commission Act. Sales in the District of Columbia are also covered by the Acts.

(h) "Promotional assistance" means any payment, allowance, service, or facility provided by a supplier whether direct to a customer or to a third party for the benefit of a customer in connection with the processing, handling, sale, or offering for sale the supplier's product, including but not limited to:

- (1) Any kind of advertising;
- (2) Window and counter displays;

¹This phrase incorporates any and all services and facilities covered by subsections (d) and (e) of section 2 of the amended Clayton Act, including those which technically may not be promotional in nature.

(3) Servicing of greeting card cabinets or racks;

(4) Greeting card cabinets, or a discount thereon;

(5) Rebates or allowances for soiled, discontinued or leftover cards;

(6) Push money;

(7) Contribution to a customer's anniversary or any other sale.

(i) "Proportionally equal terms" means that the promotional assistance is proportionalized on some basis which is fair to all competing customers. No single way to proportionalize is prescribed by law and any method that treats competing customers on proportionally equal terms may be used.

(j) "Cost justification" is an affirmative defense which may be undertaken by a supplier charged with price discrimination, by establishing that his price differential was based solely on differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which his products are sold or delivered. This defense depends upon savings in cost based on all the facts relevant to the transactions. It is a technical defense and some items, such as savings in brokerage, may not be included in determining savings in cost. (This defense is not available to a supplier charged with discrimination in the furnishing of promotional assistance.)

(k) "Meeting competition in good faith" is an affirmative defense which may be undertaken by a supplier charged with a violation of subsection 2 (a), (d), or (e) of the amended Clayton Act who can defend his actions by establishing that his lower price or granting of disproportionate promotional assistance was made in good faith to meet an equally low price or greater promotional assistance paid for or furnished by a competitor. This defense, however, is subject to important limitations. For instance, it is insufficient to defend a charge of violating subsection (a), (d), or (e) of section 2 of the amended Clayton Act solely on the basis that competition in a particular industry is very keen, requiring that special prices or allowances be given to some customers if a seller is "to be competitive".

§ 244.1 Price discriminations in general.

(a) Publishers and distributors in the Greeting Card Industry should not, in the course of commerce, grant, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential which effects a discrimination in price between different purchasers of greeting cards of like grade and quality, where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with the publisher or distributor granting the discrimination or with the purchaser receiving its benefit or with customers of either of them.

NOTE: This section is not applicable to greeting cards purchased by the U.S. Government, State and local government entities or by schools, colleges, universities, public libraries, hospitals, churches, and charitable institutions not operating for profit, as supplies for their own use. Also, this section is not to be construed as preventing price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, obsolescence of seasonal goods, distress sales under court process or sales in good faith in discontinuance of business in the goods concerned.

(b) The following are examples of practices involving price differentials to be avoided in commerce, when involving goods of like grade and quality, where the effect thereof may have the reasonable probability of adversely affecting competition and the seller is unable to establish either the "cost justification" or "meeting competition in good faith" defense:

(1) A supplier sells to retailers at 50 percent off list but grants an extra 5 percent discount to chain store customers. It is immaterial that such 5 percent discount is given under the guise of or labeled as a promotional allowance.

(2) A supplier sells direct to retailers at 50 percent off list and at the same time, sells to a retail buying group allowing the latter an additional 5 percent discount.

(3) A supplier grants discounts of 2 percent on first \$1,000 of purchases, 4

percent on the next \$1,000 of purchases, and 6 percent on all purchases thereafter during a specified period of time.

(4) A supplier grants a 5 percent rebate on the increased amount of greeting cards purchased over purchases in the preceding year.

(5) A supplier pays freight on shipments to one or more customers but does not pay such freight for all customers, thereby effecting a difference in price between customers.

(6) A supplier invoices goods to all customers at the same price but supplies additional quantities of such goods at no extra charge to one or more, but not to all, such customers.

NOTE 1: As previously indicated, the foregoing are examples of practices involving price differentials to be avoided in commerce, when involving goods of like grade and quality, where the effect thereof may have the reasonable probability of adversely affecting competition and when not subject to the other exemptions, exclusions, or defenses set forth in this section.

NOTE 2: While this section concerns violations of the Clayton Act, as amended, pertaining to price discriminations granted by publishers and distributors it should not be overlooked that section 2(f) of such Act makes it unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price prohibited by the Act.

[Guide 1]

§ 244.2 Promotional assistance.

(a) Publishers and distributors of greetings cards, providing promotional assistance in the course of commerce to competing customers, should do so under a plan which takes into account the following:

(1) The promotional assistance must be made available on proportionally equal terms to all competing customers.

(2) The competing customers must be made aware that the promotional assistance is available. It is not absolutely necessary that the offer be in writing for it may be made in any manner the supplier chooses including letter, telegram, conspicuous notice on invoice, by salesmen, etc. However, if the supplier wants to be able to show later that the offer was made to a certain customer, he is in a better posi-

tion to do so if the offer was made in writing.

(3) The supplier must not adopt a plan which is of use to only one customer or to only one favorite class of customers. The plan must be either realistically available to all competing customers in a practical business sense, or reasonable alternatives must be made available on proportionally equal terms.

(4) The supplier must take reasonable precautions to see that the customers receiving promotional assistance are performing what is required of them under the plan, and that he is not paying any amount in excess of that actually used by the customers.

(b) The following are examples of practices involving discriminations in the furnishing of promotional assistance to be avoided in commerce when involving products of like grade and quality and when the seller is unable to establish a defense of "meeting competition in good faith."

(1) A supplier grants allowances only for radio, television, and newspaper advertising when he has some competing customers, such as small card shops, which are unable to advertise in these media, even with the promotional assistance offered.

(In the above circumstances, and in order to satisfy legal requirements, the supplier must make usable and suitable alternatives available on proportionally equal terms to all other customers competing in the distribution of the supplier's greeting cards, such as, but not limited to, advertising in the neighborhood paper or buying guide, in-store advertising, envelope stuffers, handbills, etc.)

(2) A supplier grants as a service to department stores or other customers a rebate of 50 percent on all Christmas cards purchased from the supplier and left over after Christmas, but does not make the offer to all of its customers competing with those to whom this service is accorded.²

² A rebate on leftover greeting cards may, under some circumstances, be cognizable under § 244.1, as a price discrimination.

(3) A supplier furnishes greeting card cabinets without cost or with a special discount to one or more customers, but does not make the same offer available on proportionally equal terms to all other competing customers, or in the event he does make such offer, he does not offer usable and suitable alternatives of equivalent measurable cost to those competing customers to whom cabinets are not usable and suitable.

(4) A supplier accords to one or more customers the privilege of returning for credit, refund, or exchange, any or all of the greeting cards purchased from the supplier but fails to offer the same privilege to all other customers competing in the distribution of the supplier's greeting cards.

(In the above circumstances, the supplier need not offer alternatives to returns for credit, refund, or exchange because they would appear to be usable by all customers in a practical business sense.)

(5) A supplier furnishes promotional assistance based on increased amounts of purchases, such as 2 percent cooperative advertising allowance on yearly purchases up to \$1,000, and 4 percent cooperative advertising allowance on purchases over \$1,000.

(Generally, using as a basis for promotional assistance a percentage of dollar volume or quantity of goods purchased during a specified period of time will insure that the promotional assistance is furnished on proportionally equal terms: *Provided, however*, That when promotional assistance is furnished on this basis, the percentage remains constant regardless of the amount of purchases.)

NOTE 1: As previously indicated, the foregoing are examples of practices involving discriminations the furnishing of promotional assistance to be avoided in commerce when involving products of like grade and quality and when the seller is unable to establish a defense of "meeting competition in good faith."

NOTE 2: While this section concerns violations of the Clayton Act, as amended, pertaining to discriminations in the furnishing of promotional assistance by publishers or distributors, it should not be overlooked that a customer who induces, or receives promotional assistance that he knows, or should know, is not available on proportion-

ally equal terms to his competitors engaged in the resale of the supplier's greeting cards, may be proceeded against by the Commission for violation of section 5 of the Federal Trade Commission Act, which prohibits unfair methods of competition.

[Guide 2]

NOTE: 3. Nothing contained in this part relieves any party subject to a Commission cease and desist order or other requirement from complying with the specific provisions of such order or requirement. The Guides in this part do not constitute a finding in and will not affect the disposition of any formal or informal matter now pending with the Commission.

PART 245—GUIDES FOR THE WATCH INDUSTRY

Sec.

- 245.1 Definitions.
- 245.2 Misrepresentation in general.
- 245.3 Misrepresentation of metallic composition of watchcases and certain watch bands.
- 245.4 Misrepresentation as to durability or suitability.
- 245.5 Misrepresentation of protective features.
- 245.6 Deception as to jewels.
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- 245.9 Deceptive imitation, obliteration, or concealment of trade names, trademarks, and marks.
- 245.10 Disclosure of foreign origin of watch movements, movement parts, and related parts.
- 245.11 Deceptive pricing.
- 245.12 Commercial bribery.
- 245.13 Coercing purchase of one product as a prerequisite to the purchase of other products.
- 245.14 Misrepresentation of the character and size of business, extent of testing, etc.
- 245.15 Guarantees, warranties, etc.
- 245.16 Use of the word "free".

APPENDIX

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

SOURCE: 33 FR 10332, July 19, 1968, unless otherwise noted.

§ 245.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) The term "watch" means a time-piece or time-keeping device for measuring or indicating time which is designed to be worn on or about the person.

(b) The term "watchcase" or "case" means any metal case, covering, or housing of any quality or description for a watch as defined above and shall include the back, center, lugs, bezel, pendant, crown, bow, cap, and other parts thereof, including a watch band which has been permanently affixed thereto; and unless otherwise stated, either term as used in this part applies to the case whether marketed separately or together with the movement or works.

(c) The term "accessories" means products, other than watch bands, which are affixed to and sold in combination with watchcases or watches, such as, for example, bracelets, pins, pendants, brooches, or ornaments. (NOTE: Metallic watch bands of the detachable type are subject to the provisions of the Trade Practice Rules for the Metallic Watch Band Industry, promulgated June 30, 1962, and amended June 16, 1964.)

(d) The term "mark" means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, which has been stamped, embossed, inscribed, or otherwise placed, on any industry product for the purpose of disclosing its metallic composition or any other material information.

(e) The term "plate" or "plated" means that a sheet or shell of metal has been applied by soldering, brazing, welding, or other mechanical means to the outer surfaces of foundation metal stock.

(f) The term "electroplate" or "electroplated" means that a coating of metal has been applied by the electrolytic method to the outer surfaces of foundation metal stock.

(g) The term "industry product" means a watch, watchcase, accessory or a part thereof.

(h) The term "industry member" means a person, firm, corporation, or organization engaged in the importation, manufacture, sale, or distribution of any industry product. [Guide 1]

§ 245.2 Misrepresentation in general

Industry members should not use, or cause or promote the use of any promotional materials, advertising, labels, tags, marks, insignia, brand or trade names, depictions or packaging which bear, contain, or constitute representations which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers:

(a) With respect to the grade, quality, estimated life, appearance, substance, size, construction, novelty, composition, accuracy, dependability, imperviousness, repairability, conformance to standards, or methods of manufacture, of industry products; or

(b) With respect to the country of origin of industry products or parts thereof; or

(c) In any other material respect. [Guide 2]

§ 245.3 Misrepresentation of metallic composition of watchcases and certain watch bands.

Industry members should not directly or indirectly, in advertising, marking, labeling, in a brand or trade name, or otherwise, misrepresent the metallic composition of a watchcase. With respect to cases having an exposed surface or surfaces which are, or have the appearance of being, metal, the metallic composition of the cases should be clearly and conspicuously disclosed in accordance with the methods and terminology set forth below:

(a) *Exclusions.* In determining the metallic composition of watchcases, parts which are necessarily required to be of steel or some other base metal may be excluded, namely, the springs, hinge pins for jointed cases, spring pins for straps or bands, separate inside movement holding rings, and crown cores.

(b) *Gold.* Watchcases which are not composed entirely of fine (24 karat)¹ gold should not be marked with the unqualified word "gold" or an abbreviation thereof.

¹Subject to the tolerances applicable thereto under the National Stamping Act (15 U.S.C., section 294, et seq.).

(c) *Gold alloy.* Watchcases composed entirely of an alloy of gold of not less than 10 karat fineness¹ should be marked as "gold" or by an abbreviation thereof, and such word or abbreviation should be immediately preceded with a correct designation of the karat fineness¹ of the alloy, for example, "10 Karat Gold," "14 Kt Gold," "10 Kt."

(d) *Gold filled.* Watchcases which have been plated by mechanical means with gold, or with an alloy of gold of not less than 10 karat fineness,¹ and the plating is of a thickness throughout of not less than three one-thousandths² of an inch after completion of all finishing operations, should be marked "Gold Filled", or by an abbreviation thereof, and such term or abbreviation should be immediately preceded by a correct designation of the karat fineness¹ of the gold alloy of which the plating is composed, as, for example, "12 Karat Gold Filled", "12 K.G.F."

(e) *Rolled gold plate.* Watchcases which have been plated by mechanical means with gold, or with an alloy of gold of not less than 10 karat fineness,¹ and the plating is of a thickness throughout of not less than one and one-half one thousandths² of an inch upon completion of all finishing operations, should be marked "gold plate" or "rolled gold plate" or by an abbreviation thereof and such term or abbreviation should be immediately preceded by a correct designation of the karat fineness¹ of the gold alloy of which the plating is composed, as, for example, "10 Karat Gold Plate," "10 Karat Rolled Gold Plate," "10 K.R.G.P."

(f) *Gold electroplate.* (1) Watchcases which have been electroplated with gold or with an alloy of gold of not less than 10 karat fineness,¹ to a thickness throughout of not less than three-fourths one thousandths² of an

inch upon completion of all finishing operations and which can successfully withstand the tests set forth in paragraph 2 of the appendix, should be marked "gold electroplate" or "gold electroplated" and such term may be immediately preceded by a correct designation of the karat fineness¹ of the gold alloy of which such coating is composed, e.g., "16 Karat Gold Electroplate." If the thickness of such gold electroplate is one and one-half one thousandths² of an inch or greater, it may be described as "Heavy Gold Electroplate," and such term may be immediately preceded by a correct designation of the karat fineness¹ of the gold alloy of which such plating is composed. Gold electroplated products which satisfy the provisions in this paragraph may also be marked with an accurate disclosure of the actual thickness of the electroplate, e.g., " $\frac{1}{1000}$ " gold electroplate."

(2) Watches which have cases marked "gold electroplate" or "gold electroplated" in conformity with this section should, when sold to the ultimate consumer within the 18-month period immediately following the operative date of this section, be accompanied by an appropriate statement explaining the meaning of the marking and providing sufficient information to enable the consumer to make an informed judgment regarding the quality of the coating. The statement should not purport to compare the merits of electroplated coatings with the merits of coatings applied by other processes. The statement should be made on any point of sale material describing or referring to the watch and on a label or tag firmly affixed to the watch.

(g) *Silver.* Watchcases which are composed entirely of pure silver or of an alloy of silver of not less than nine-hundred twenty-five one thousandths fineness¹ should be marked as "silver," "sterling" or "sterling silver" or by an abbreviation thereof. Cases which are composed entirely of a silver alloy of at least nine-hundred one thousandths fineness¹ should be marked "coin silver."

(h) *Silver plate.* Watchcases which have been plated or electroplated with silver, should be marked as "silver

¹ See footnote on previous page.

² Subject to permissible tolerances set forth in paragraph 1 of the appendix.

plate" or "silver plated", if after the completion of all finishing operations, such plating is of sufficient thickness to withstand normal use and last throughout the estimated life of the watch.

(i) *Other precious metals.* Watchcases which are composed in whole or in part of a precious metal other than gold or silver, or of an alloy of such a metal, or which have been plated or electroplated with such a metal or alloy thereof, should be marked so as to disclose the kind of precious metal or alloy so used and the manner of its use.

(j) *Base metals.* Watchcases or parts thereof which do not meet the minimum requirements set forth in paragraphs (b) through (i) of this section should be marked as "Base Metal" or so as to identify clearly the kind or kinds of metal of which they are composed, e.g., "Aluminum," "Stainless Steel," "Chromium Plated Steel," and under these circumstances the mark should not contain the names of or abbreviations for any precious metal.

(k) *Combination of metals.* Watchcases which are composed of parts having different metallic compositions, should be marked in the manner prescribed in paragraphs (b) through (j) of this section with an accompanying explanation of the part or parts to which such markings or descriptions apply, e.g., "Base Metal Back," "14 K Gold Filled Bezel."

(l) *Substantiality.* A watchcase should not be composed of metals or alloys, or have coatings of either base metal or precious metals, which are not of sufficient thickness and substantiality as to render lasting and effective service, with due regard to the estimated life of the watch of which it is a part, unless the fact that such case will not render such service is clearly and conspicuously disclosed on a tag, label, or in other printed material which accompanies the watch when it is sold to the ultimate consumer.

(m) *Placement of markings and abbreviations.* All markings on watchcases as provided in this part should be of a permanent type and made on the exterior, exposed surface of the back, and be so placed and of such a size that they will be readily apparent

to purchasers of the product. Provided that markings, respecting the metallic composition of watch bands which are part of the cases, may be placed on the bands or on the cases. All markings should be stated in the English language and printed in letters or figures of the same size and conspicuousness as that used for words or abbreviations descriptive of any precious metal content, i.e., "gold," "silver," or "karat". When using abbreviations in markings as provided by this section, "G" may be used for the word "Gold," "K" or "Kt" for the word "Karat," and "Chr" for the word "Chromium". In addition "G.F." may be used for "Gold Filled," and "R.G.P." for "Rolled Gold Plate." The terms "electroplate" and "electroplated" should not be abbreviated. The word "filled" and the word "plate" should not be abbreviated in marks containing the word "gold" unless the word "gold" is abbreviated by use of the letter "G".

(n) *Misuse of terms.* The words "gold," "karat," "silver," "sterling," "coin," or any abbreviation thereof either alone or in conjunction with other words such as "solid," "plate," "plated," "filled," "electroplate," or "electroplated" or any abbreviation thereof should not be used as a marking or as descriptive of a watchcase or part thereof in labeling, advertising, trade names or otherwise in a manner inconsistent with the provisions of this section.

(o) *Disclosures in advertising.* All disclosures which are placed on industry products in conformity with this section should also appear in all advertising or other promotional material pertaining to such products, irrespective of the media used, whenever statements, representations, or depictions are made or appear therein, which in the absence of such disclosures serve to create a false impression that the products or parts thereof, are of a certain metallic composition. The disclosure so made should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually reading, or listening to, such advertising, and the words and terms therein which are descriptive of metallic composition should not

be used except as provided in this section. [Guide 3]

§ 245.4 Misrepresentation as to durability or suitability.

Industry members should not misrepresent directly or indirectly, in advertising, labeling, marking, brand or trade name, depictions, or otherwise the characteristics of a product or the ability of a product to resist or withstand damage from stated causes, or of its suitability for particular uses. Illustratively, industry members should not, under this section: Falsely designate or describe a watch as a chronometer or use such terms as "skin divers," "navigators," or "railroad" as descriptive of industry products which do not possess the characteristics, e.g., ruggedness, accuracy, dependability, or other features, required of watches used by persons engaged in those activities. [Guide 4]

§ 245.5 Misrepresentation of protective features.

(a) Industry members should not misrepresent directly or indirectly, in advertising, other promotional material, labeling, brand or trade name, or marking, or otherwise, the ability of a product to withstand or resist damage or other harmful effects from stated causes. Illustratively, under this section a product should not be described or designated as "shockproof," "waterproof," "nonmagnetic," or "all proof," even if such term or terms are qualified by words or phrases, e.g., "waterproof when case, crown, and crystal are intact." In addition a product should not be described or designated as "shock resistant," "water resistant," or "antimagnetic" unless it conforms to the applicable provisions set forth below:

(1) *Shock resistant.* A product may be properly described or designated as "shock resistant" or "shock absorbing" if it possesses a level of resistance to damage from shock sufficient to insure that it will successfully withstand the test described in paragraph 3 of the appendix to this part.

(2) *Water resistant.* An industry product may be properly described or designated as "water resistant" if it is sufficiently impervious to water or

moisture so as to insure that at the time of its sale to the ultimate consumer it will successfully withstand the test described in paragraph 4 of the appendix to this part.

(3) *Antimagnetic.* A product may properly be described or designated as "antimagnetic" if it is so designed and constructed as to provide a substantial degree of protection against magnetism, and the product will successfully withstand the test described in paragraph 5 of the appendix to this part.

(b) Whenever a product described or designated as "shock resistant," "water resistant," or "antimagnetic" in conformity with this section is sold to the ultimate consumer, the designation should be accompanied by an appropriate statement explaining the meaning of the term and the care and maintenance ordinarily required to preserve the described qualities. The statement should be made on any point of sale material describing or referring to the watch having the designation in question and on a label or tag firmly affixed to the watch bearing the designation. [Guide 5]

§ 245.6 Deception as to jewels.

Industry members should not misrepresent directly or indirectly, in advertising, labeling, marking, brand or trade name, or otherwise, the number of jewels contained in a watch, or that a watch is "jeweled" or that a watch contains a jeweled movement. Illustratively, industry members should not:

(a) Represent or describe a watch as "jeweled" or as containing a jeweled movement unless the watch movement contains at least seven jewels each of which serves the purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear;

(b) Refer to the number of jewels contained in a watch unless each and every one of these jewels serves the purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear. [Guide 6]

§ 245.7 Misrepresentation of accessories.

Industry members should not misrepresent directly or indirectly, in ad-

vertising, labeling, marking, brand or trade name, or otherwise, the composition, quality, or any other material fact respecting accessories. Illustratively, industry members should not, under this section: use terms, representations of metallic composition, words or names associated with precious, semiprecious, synthetic, and imitation stones, and quality marks in a manner inconsistent with the provisions of the Commission's Trade Practice Rules for the Jewelry Industry, promulgated June 28, 1957, and amended November 17, 1959. [Guide 7]

§ 245.8 Deceptive selling of used, rebuilt, or secondhand products.

An industry product which in whole or in part is used, secondhand, rebuilt, repaired, refinished, or which contains parts that are used, secondhand, rebuilt, repaired or refinished, should not be sold, offered for sale or distributed unless the fact that such product or parts are not new, or are used, secondhand, rebuilt, or repaired, or refinished, is fully and nondeceptively disclosed in all advertising of the product, on the product itself or on a label firmly affixed thereto, and on the immediate container in which the product is sold to the ultimate consumer. [Guide 8]

§ 245.9 Deceptive imitation, obliteration, or concealment of trade names, trade-marks, and marks.

Industry members should not imitate or simulate the trade names or trade-marks of competitors, or obliterate, conceal, or remove tags, labels, marks, or other disclosures placed on an industry product or on the package in which it is sold to the ultimate consumer under circumstances having the capacity and tendency of deceiving the ultimate consumer as to the identity of the manufacturer, origin of the product, or in any other material respect. [Guide 9]

§ 245.10 Disclosure of foreign origin of watch movements, movement parts, and related matters.

(a) Watches having movements of foreign origin or movements which contain parts of foreign origin should

not be offered for sale or sold unless they are accompanied by a clear and conspicuous disclosure of the country or countries of origin of the movement.

(b) The countries of origin of a watch movement are the country in which the movement has been assembled and the country in which its substantial and significant parts have been manufactured. For purposes of this section, if parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement are manufactured in a single country, those parts shall be presumed to be the substantial and significant parts of the movement.

(1) If the movement has been assembled in the same foreign country in which parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement have been manufactured, the name of that country alone should be used to designate the origin of the movement. Appropriate forms of disclosure would include "Swiss Made", or "Japan".

(2) If the watch movement has been assembled in one country and parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement have been manufactured in a single other country, the names of both such countries, and no other, should be used to designate the origin of the movement. Appropriate forms of disclosure would include "Assembled in France from Swiss parts", or "Japanese parts, assembled in the United States".

(3) If the watch movement has been assembled in one country but parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement have not been manufactured in a single other country, only the name of the country of assembly should be used, accompanied by a disclosure that the parts are partially foreign, imported or domestic, as the case may be. Appropriate forms of disclosure would include "Movement assembled in the United States from domestic and imported parts" or "Movements assembled in France from foreign parts" or "Assembled in Germany with parts from foreign countries".

(4) For purposes of this section, the United States includes only the States, the District of Columbia, Puerto Rico, the American Virgin Islands, Guam and American Samoa.

(c) In making the disclosures under the circumstances set forth in paragraphs (b) (2) and (3) of this section, care should be exercised to insure that the form selected does not imply directly or indirectly that the movement is solely a product of the country from which its substantial and significant parts were obtained, or that it is solely a product of the country in which the movement was assembled.

(d) The disclosures provided for in this section should be permanently marked on an exposed surface of the watch or on a label or tag affixed thereto which has such a degree of permanency as to remain thereon until consummation of the consumer sale of the watch and be of such size and conspicuousness that they will be readily apparent to purchasers or prospective purchasers making a casual inspection of the watch. [Guide 10]

135 FR 13122, Aug. 1b, 1970)

§ 245.11 Deceptive pricing.

Members of the industry should not represent directly or indirectly in advertising or otherwise that an industry product may be purchased for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive purchasers or prospective purchasers with respect to the price of any product offered for sale; or furnish any means or instrumentality by which others engaged in the sale of industry products may make any such representation.

NOTE: The Commission's January 8, 1964, Guides Against Deceptive Pricing furnish additional guidance respecting price savings representations and are to be considered as supplementing this section. Copies are available upon request.

[Guide 11]

§ 245.12 Commercial bribery.

Members of the industry should not give, offer to give, or permit or cause to be given, directly or indirectly, money or anything of value to employees or agents of customers or prospec-

tive customers, without the knowledge of their employers or principals, as an inducement to influence or cause their employers or principals to purchase or contract to purchase the products of such industry members, or to refrain from purchasing products from competitors of such members. [Guide 12]

§ 245.13 Coercing purchase of one product as a prerequisite to the purchase of other products.

Members of the industry should not coerce a customer or prospective customer to purchase one or more products as a prerequisite to the purchase of one or more other products, where the effect may be substantially to lessen competition, or tend to create a monopoly or to unreasonably restrain trade. [Guide 13]

§ 245.14 Misrepresentation of the character and size of business, extent of testing, etc.

Industry members should not falsely represent, directly or indirectly, in company, brand, or trade name, or in advertising, labeling or otherwise:

(a) The length of time they have been in business;

(b) The extent of their sales;

(c) Their rank in the industry as producers or distributors of a product or type of product;

(d) That they are manufacturers of industry products or own or control a factory engaged in the manufacture of such products;

(e) That they own or operate a laboratory, or that their products have been tested in any particular manner or for any period of time, or with any particular results;

(f) That a product or manufacturing process is new or exclusive; or

(g) Any other material aspect of their business or products. [Guide 14]

§ 245.15 Guarantees, warranties, etc.

(a) Industry members should not represent in advertising or otherwise that a product is "guaranteed" without clear and conspicuous disclosure in close conjunction with such representation of:

(1) The nature and extent of the guarantee, and

(2) Any material conditions or limitations in the guarantee which are imposed by the guarantor, and

(3) The manner in which the guarantor will perform thereunder, and

(4) The identity of the guarantor.

(b) A seller or manufacturer should not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

(c) A specific example of nonperformance of an obligation under the guarantee would arise in connection with the use of the phrase, "Satisfaction or your money back" if the guarantor does not promptly make a full refund of the purchase price upon request, irrespective of the reason for such request.

(d) Guarantees should not be used which under normal conditions are impractical of fulfillment or which are for such a period of time or are otherwise of such nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into the belief that the product so guaranteed has a greater degree of serviceability, durability or performance capability in actual use than is true in fact.

(e) This section has application not only to "guarantees" but also to "warranties", to purported "guarantees" and "warranties", and to any promise or representation in the nature of a "guarantee" or "warranty."

NOTE: The Commission's April 26, 1960, Guides Against Deceptive Advertising of Guarantees furnish additional guidance respecting guarantee representations and are to be considered as supplementing this section. Copies are available upon request.

[Guide 15]

§ 245.16 Use of the word "free".

In connection with the sale, offering for sale, or distribution of industry products, industry members should not use the word "free" or any other word or words of similar import, in advertisements or in other offers to the public, as descriptive of an article of merchandise, or service, which is not an unconditional gift, under the following circumstances:

(a) When all the conditions, obligations, or other prerequisites to the receipt and retention of the "free" article of merchandise or service offered are not clearly and conspicuously set forth at the outset so as to leave no reasonable probability that the terms of the offer will be misunderstood; and regardless of such disclosure:

(b) When, with respect to any article of merchandise required to be purchased in order to obtain the "free" article or service, the offerer (1) increases the ordinary and usual price of such article of merchandise, or (2) reduces its quantity, or (3) reduces the quantity or size thereof.

NOTE 1: The disclosure provided by paragraph (a) of this section should appear in close conjunction with the word "free" (or other word or words of similar import) wherever such word first appears in each advertisement or offer. A disclosure in the form of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the word "free", will not be regarded as compliance. [Guide 16]

NOTE 2: Provisions of outstanding Cease and Desist Orders pertaining to subject matter covered by this part will not be construed by the Commission as prohibiting or requiring more than the relevant provisions of this part.

[33 FR 10332, July 19, 1968, as amended at 33 FR 15021, Oct. 8, 1968]

APPENDIX

Set forth in this appendix are the thickness tolerances, and tests referred to in the foregoing Guides in this part.

1. *Thickness tolerances: plated and electroplated cases.* The minimum thicknesses specified in paragraphs (d), (e), and (f) of § 245.3 for the coatings of gold or gold alloy on watchcases shall mean that the coating of precious metal affixed to the surface of the metal stock shall be throughout the surface and at the thinnest point not less than the thickness specified after the completion of all finishing operations, including polishing, except, however, for such deviations therefrom, not exceeding 20 percent (minus) of the stated thickness, as may be proved by the manufacturer to have resulted from unavoidable variations in manufacturing processes and despite the exercise of due care, which deviation so proved shall be allowed if and when the quantity of precious metal remaining plated on the outside of the case is sufficient to equal the quantity necessary to provide the specified mini-

min. thickness at all points on such watchcase including the thinnest point.

3. *Gold electroplate standards and tests.* The gold electroplated surface coating of a watchcase should be free of cracks, blisters, pits or other flaws, and capable of successfully undergoing the following tests:

a. *Adhesion.* The watchcase should be heated to a temperature of not less than 360° nor more than 400° C. and maintained at that temperature for not less than 5 minutes. At the end of that time such surface coating should show no signs of blistering, flaking, peeling, or similar defects.

b. *Hardness.* Such surface coating should undergo a Knoop hardness test with a 25 gram load and achieve a rating of not less than 130.

c. *Porosity.* After such surface coating has been thoroughly cleaned and freed of any foreign material, the case should be:

(1) Immersed in a solution of one part concentrated nitric acid (sp.gr. 1.42) and one part water at room temperature for 5 minutes; and

(2) Exposed to fumes of concentrated nitric acid (sp.gr. 1.42) in a closed vessel for 3 hours at room temperature.

At the conclusion of each of the foregoing porosity tests, the surface coating should show no signs of having been attacked. Any discoloration or pitting should be considered as signs of an attack. The nitric acid solution in which the watchcase was immersed should be tested for the presence of metal by making it slightly alkaline with ammonium hydroxide and by adding a solution of ammonium or sodium sulfide. The formation of a black precipitate indicates that the coating has been attacked.

3. *Test for shock resistance.* A watch should be tested for shock resistance in a room having a temperature between 18° and 25° C. which does not vary by more than 2° during the test. A wrist watch which does not have a permanently affixed band should be tested without the band or strap.

The test should be conducted as follows:

a. One hour after the watch has been fully wound, its daily rate in each of the following three positions should be determined by observing it for 2 minutes in each position:

(1) Position HB (horizontal with the dial facing down);

(2) Position VC (vertical with 3 o'clock to the watch's left);

(3) Position VH (vertical with 3 o'clock pointed downwards).

b. Shocks equal to that which the watch would receive if it were dropped from a height of 3 feet onto a horizontal hardwood surface should be applied as follows:

(1) The first shock should be applied to the middle of the watch at a position directly opposite the crown and in a direction which is parallel to the plane of the watch.

(2) The second shock should be applied to the crystal, and in a direction which is perpendicular to the plane of the watch.

c. Five minutes after the last shock, the daily rate of the watch in each of the three positions described in a. above should be determined by observing it for 2 minutes in each position. The differences in daily rate before and after the shock should be determined for each position. The residual effect of the shocks will be equal to the greatest of these differences.

A watch will be considered to have passed the foregoing test, if after application of the shocks, it does not stop; the residual effect does not exceed 60 seconds per day; and an examination of the watch does not disclose any physical damage which would affect its operation or appearance, e.g., hands bent or out of position, cracked crystal, or automatic or calendar devices inoperable or out of alignment.

4. *Test for water resistance.* A watch should be tested for water resistance by immersing it completely for at least 5 minutes in water under atmospheric pressure of 15 pounds per square inch and for at least another 5 minutes in water under an additional pressure of at least 35 pounds per square inch (total pressure of 50 pounds per square inch). If the watch does not admit any water or moisture it will be considered to have passed the test.

5. *Test for antimagnetic qualities.* A watch should be tested for its resistance to magnetism by placing it in a demagnetized condition in an electrical field of not less than 60 Gauss for at least 5 seconds in a vertical position and for at least 5 seconds in a horizontal position. If the daily rate of the watch has not been changed by more than 15 seconds as a result of the foregoing exposure, it shall be considered to have passed the test.

PART 247—GUIDES FOR THE LADIES' HANDBAG INDUSTRY

Sec.

247.0 Definitions.

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247.8 Advertising or promotional allowances, or services or facilities.

247.9 Inducing or receiving illegal discrimination in price, advertising or promotional allowances, or services or facilities.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 15 U.S.C. 45, 46, 49 Stat. 1526; 15 U.S.C. 13, as amended, unless otherwise noted.

SOURCE: 34 FR 9924, June 27, 1969, unless otherwise noted.

§ 247.0 Definitions.

For purposes of this part the following definitions apply:

(a) "Industry member" means any person, firm, corporation, or organization engaged in the manufacture, sale, or distribution of any industry products as defined below.

(b) "Industry product" means all kinds and types of ladies' handbags, shoulder bags, purses, pocketbooks, and similar articles, of any composition.

§ 247.1 Misrepresentation (general).

No representation should be made in advertising, labeling, or any other manner, which is likely to mislead or deceive any purchaser concerning the material composition, quality, finish, durability, price, origin, construction, ease of cleaning, or any other feature, of an industry product. [Guide 1]

§ 247.2 Misrepresentation and deception as to material composition.

(a) The material composition of an industry product should not be misrepresented in any manner. Included in, but not limited to, representations which should not be made concerning material composition are the following:

(1) Any representation that an industry product or part thereof is made of top grain leather, split leather, leather from the skin or hide of a certain animal, vinyl, plastic, brass or other metal, or any other material, when such is not the fact.

(2) Any representation that an industry product is made wholly or substantially of a particular material when such is not the fact.

(3) Any trade name, coined name, trademark or other word, term or representation which has the capacity and tendency to convey the impression that an industry product is made in whole or in part from the skin or hide of an animal, or that material in the product is leather, split leather, vinyl, plastic, or other material, when such is not the fact. Also any stamping, tag, label, or other device, in the shape of an animal silhouette, used in connection with an industry product having the appearance of leather but which is not wholly or substantially made from the skin or hide of such an animal should not be used.

(4) Any trade name, coined name, trademark or other word, term or representation that has the capacity and tendency to convey the impression that an industry product is made in whole or in part from the skin or hide of an animal which in fact is nonexistent.

(b) In some instances the failure to disclose certain pertinent facts concerning the material composition of an industry product may have the capacity and tendency to mislead or deceive purchasers. Generally such instances involve split leather which has the appearance of being top grain leather, or nonleather material which has the appearance of being leather, or leather which has been processed to simulate a different kind of leather. Included in, but not limited to, disclosures which should be made concerning material composition are the following:

(1) Disclosure should be made of the split leather content of an industry product or part thereof if the split leather is visible or if any representation is made as to composition thereof.

Note: Split leather should be considered as that leather which results from the splitting of hides or skins into two or more thicknesses, other than the grain or hair side.

(2) Disclosure should be made concerning the material composition of an industry product or part thereof which is made of a nonleather material having the appearance of leather. Such disclosure may either state that the material is not leather or describe the general nature of the material in a

manner that would clearly show that it is not leather. Thus, some examples of the manner in which such material may be described are:

Nonleather
Imitation Leather
Simulated Leather
Vinyl
Vinyl Coated Fabric
Plastic

NOTE: Nonleather materials which have the appearance of leather and which primarily contain ground, pulverized or shredded leather, are subject to paragraph (b)(2) of this section. Such materials may be described as "Nonleather", "Imitation Leather" or "Simulated Leather" or as "Ground Leather", "Pulverized Leather" or "Shredded Leather", as the case may be.

When nonleather material has been processed to simulate a particular kind of leather, such as alligator leather, any representation as may be made concerning the simulated appearance of the product should be immediately accompanied by the disclosure relating to the nonleather composition of the product. Some examples of the manner in which such material may be described are:

"Not Leather Simulated Alligator Grain"
"Plastic with Imitation Alligator Grain"

(3) Disclosure should be made of the kind of leather of which an industry product or part thereof is made when the leather has been embossed, dyed, or otherwise processed to simulate the appearance of a different kind of leather. Thus, a product made wholly of top grain cowhide which has been processed to simulate alligator may be described as:

"Top Grain Cowhide"

Any additional representation as may be made concerning the simulated appearance of the product should be immediately accompanied by the disclosure relating to the actual kind of leather in the product. An example of the manner in which such a product may be described is:

"Top Grain Cowhide Simulated Alligator Grain"

(4) Disclosure should be made that any material in an industry product is backed with another kind of material when the backing is not apparent

upon casual inspection of the product, or when representations are made which in the absence of such disclosure would be deceptive as to composition of the product. Some examples of the manner in which such material may be represented are:

"Top Grain Cowhide Backed with Split Cowhide"
"Split Cowhide Backed with Simulated Leather"
"Vinyl Backed with Other Material"

If the backing material is visible and is split leather, nonleather material having the appearance of leather, or leather processed to simulate a different kind of leather, disclosure should be made consistent with paragraphs (b) (1), (2), and (3) of this section.

(5) Disclosure as to the composition of an industry product, composed of more than one kind of leather or composed of leather and nonleather material having the appearance of leather, should clearly indicate the part to which the representation is applicable. Thus, some examples of the manner in which products composed of top grain cowhide except for the handles have the appearance of leather may be described are:

"Top Grain Cowhide with Handle of Simulated Leather"
"Top Grain Cowhide with Plastic Handle"
"Top Grain Cowhide with Split Leather Handle"

[Guide 2]

§ 247.3 Form of disclosure as to material composition.

All disclosures under § 247.2 of this part should appear in the form of a stamping on the product, or on a tag, label, or card attached thereto, and be affixed with such degree of permanence as to remain on or attached to the product until it is received by the consumer purchaser. All such disclosures on industry products shall also appear in all advertising of the products irrespective of the media used whenever statements, representations or depictions appear in such advertising which in the absence of such disclosures would have the capacity and tendency to create a false impression that the products, or parts thereof,

are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure made in connection with any such statement, representation or depiction should be in close conjunction therewith. [Guide 3]

§ 247.4 Misrepresentation as to aniline finish, graining, embossing, and processing.

A representation should not be made that an industry product has been:

(a) Colored, finished, or dyed with aniline dye when such is not the fact; or

(b) Dyed, embossed, grained, processed, finished, or stitched in a certain manner when such is not the fact. [Guide 4]

§ 247.5 Misuse of terms such as "Scuffproof", "Scratchproof", "Scuff Resistant", and "Scratch Resistant".

(a) An industry product should not be represented as "Scuffproof", "Scratchproof", or as not subject to wear in any other respect, unless the outer surface of the product is immune to scuffing, scratches, or is in fact not subject to wear as represented.

(b) An industry product should not be represented as "Scuff Resistant", "Scratch Resistant", or as resistant to wear in any other respect, unless the surface of the product is in fact meaningfully and significantly resistant to scuffing, scratches, or to wear as represented. [Guide 5]

§ 247.6 Deceptive pricing.

Members of the industry should not represent directly or indirectly in advertising or otherwise that an industry product may be purchased for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive purchasers or prospective purchasers with respect to the price of any product offered for sale; or furnish any means of instrumentality by which others engaged in

the sale of industry products may make any such representation.

NOTE: The Commission's Guides Against Deceptive Pricing furnish additional guidance respecting price savings representations and are to be considered as supplementing this section. See Part 233 of this chapter for the Guides Against Deceptive Pricing.

[Guide 6]

§ 247.7 Discriminatory prices, rebates, discounts, etc.

NOTE: § 247.7 is interpretive of sections 2 (a) and (b) of the amended Clayton Act.

(a) Industry members, engaged in commerce, in the course of such commerce, should not grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and are not purchased by the U.S. Government, State and local government entities, schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use;

(2) That nothing contained in this section shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which industry products are sold or delivered to different purchasers;

NOTE: Cost justification under the above proviso (2) depends upon savings in cost based on all facts relevant to the transac-

tions under the terms of such proviso. For example, if a seller regularly grants a discount based upon the purchase of a specified quantity by a single order for a single delivery, and this discount is justified by cost differences, it does not follow that the same discount can be cost justified if granted to a purchaser of the same quantity by multiple orders or for multiple deliveries.

(3) That nothing contained in this section shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing contained in this section shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned;

(5) That nothing contained in this section shall prevent the meeting in good faith of an equally low price of a competitor or a greater promotional allowance or other service or facility paid for or furnished by a competitor.

NOTE: "Meeting competition in good faith" is an affirmative defense which may be undertaken by a supplier charged with a violation of subsection (a), (d), or (e) of section 2 of the amended Clayton Act who can defend his actions by establishing that his lower price or granting of disproportionate promotional allowance or other service or facility was made in good faith to meet an equally low price of a competitor or a greater promotional allowance or other service or facility paid for or furnished by a competitor. This defense, however, is subject to important limitations. For instance, it is insufficient to defend a charge of violating subsection (a), (d) and (e) of section 2 of the amended Clayton Act solely on the basis that competition in a particular industry is very keen, requiring that special prices or allowances be given to some customers if a seller is "to be competitive."

(b) The following are examples of price differential practices to be considered as subject to the provisions of this section when involving goods of like grade and quality which are sold for use, consumption, or resale within any place under the jurisdiction of the

United States, and which are not purchased by the U.S. Government, State and local government entities, schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use, and when—

(1) The commerce requirements specified in this section are present; and

(2) The price differential has a reasonable probability of substantially lessening competition or tending to create a monopoly in any line of commerce, or of injuring, destroying, or preventing competition with the industry member or with the customer receiving the benefit of the price differential, or with customers of either of them; and provided that—

(3) The price differential was not justified by cost savings (see paragraph (a)(2) of this section); or

(4) The price differential was not made in response to changing conditions affecting the market for or the marketability of the goods concerned (see paragraph (a)(4) of this section); or

(5) The lower price was not made to meet in good faith an equally low price of a competitor (see paragraph (a)(5) of this section);

Example 1. At the end of a given period an industry member grants a discount to a customer equivalent to a fixed percentage of the total of the customer's purchases during such period and fails to grant a discount of the same percentage to other customers on their purchases during such period.

Example 2. An industry member sells handbags to one or more of his customers at a higher price than he charges other customers for like merchandise. It is immaterial whether or not such discrimination is accomplished by misrepresentation as to the grade and quality of the products sold.

Example 3. An industry member sells handbags directly to a retailer at a lower price than he charges distributors whose retail customers compete with the favored retailer.

Example 4. An industry member pays freight on shipments to one customer and does not pay freight on shipments to another customer, or pays freight on shipments to a distributor's customer and does not pay such freight on shipments to other distributors' customers thereby effecting a difference in price between customers.

Example 5. Terms of $\frac{1}{10}$ prox. are granted by an industry member to some customers on handbags purchased by them from the industry member. Another customer or customers are, nevertheless, allowed to take an additional discount when making payment to the industry member within the time prescribed or granted an extended period of time within which to avail themselves of the originally offered discount.

Example 6. An industry member invoices handbags to all his customers at the same price but supplies additional quantities of such goods at no extra charge to one or more, but not to all, such customers; or supplies other goods or premiums to one or more, but not to all, such customers for which he makes no extra charge and which effects an actual price difference in favor of certain of his customers.

NOTE: Functional discounts. Neither this section, nor section 2(a) of the Clayton Act, as amended, of which this section is interpretive, expressly permits or prohibits the granting of functional discounts. The propriety of such discounts is contingent, principally, on whether they may substantially lessen competition or tend to create a monopoly. Ordinarily, however, a seller may grant a lower price to wholesalers than to retailers to the extent that such wholesalers resell to retailers, without such effects as may substantially lessen competition or tend to create a monopoly. But if such wholesalers also sell at retail, in competition with other of the seller's retail customers, they may not properly be granted a price lower than the prices granted to competing retailers on that portion of the goods they sell at retail.

[Guide 7]

§ 247.8 Advertising or promotional allowances, or services or facilities.

(a) **Advertising or promotional allowances.** No member of the industry engaged in commerce should pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any industry products manufactured, sold, or offered for sale by such member, unless such payment or consideration is offered to and made available on proportionally equal terms to all other customers competing in the distribution of the

seller's products of like grade and quality.

(b) **Services or facilities.** No member of the industry engaged in commerce should discriminate in favor of one purchaser against another purchaser or purchasers of industry products bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such products unless such services or facilities are offered to and made available on proportionally equal terms to all other customers competing in the distribution of the seller's products of like grade and quality.

NOTE 1: The "meeting competition in good faith" defense which is set forth in the note following paragraph (a)(5) of § 247.7 is also applicable to provisions of both paragraphs (a) and (b) of this section.

NOTE 2: For further guidance in this area see Part 240 of this chapter for the Commission's Guides for Advertising Allowances and Other Merchandising Payments and Services.

[Guide 8]

§ 247.9 Inducing or receiving illegal discrimination in price, advertising or promotional allowances, or services or facilities.

NOTE: § 247.9 is interpretive of section 2(f) of the amended Clayton Act and of section 5 of the Federal Trade Commission Act, as amended.

(a) Industry members engaged in commerce, in the course of such commerce, should not knowingly induce or receive a discrimination in price, advertising or promotional allowances, or services or facilities, as reflected in §§ 247.7 and 247.8 of this part.

(b) The following are examples of inducing or receiving discriminations in price, advertising or promotional allowances, or services or facilities, to be considered as subject to this section when the requisites of an improper discrimination on the part of the seller as reflected in §§ 247.7 and 247.8 of this part are present and the party receiving the discriminations knows or has reason to know that the discriminations are illegal.

Example 1. An industry member purchases handbags purportedly for resale to retailers, and is charged a lower price than the seller charges other customers for handbags which they resell at retail, but the member then transfers such handbags to another part of its business where they are resold at retail, thereby receiving a discrimination in price which is covered in § 247.7 of this part.

Example 2. An industry member induces suppliers to contribute sums of money to defray some or all of the costs of advertising sponsored by such member and designed to promote the sale of such suppliers' handbags in its place of business, when the industry member knows or should know that allowances for such purpose are not made available on proportionally equal terms by the same suppliers to other customers competing with the favored member, thereby receiving a discrimination in promotional allowances subject to the provisions reflected in § 247.8 of this part.

[Guide 9]

PART 248—GUIDES FOR THE BEAUTY AND BARBER EQUIPMENT AND SUPPLIES INDUSTRY

Sec.

248.0 Definitions.

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248.2 Misrepresentation as to character of business.

248.3 Deceptive plaques and certificates.

248.4 Deceptive pricing.

248.5 Deceptive use and imitation of trade or corporate names, trademarks, etc.

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248.10 Inducing breach of contract.

248.11 Exclusive deals.

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248.13 Discriminatory prices, rebates, discounts, etc.

248.14 Advertising or promotional allowances, or services or facilities.

248.15 Inducing or receiving an illegal discrimination in price, advertising or promotional allowances, or services or facilities.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended; 721; 15 U.S.C. 45, 46; 49 Stat. 1526; 15 U.S.C. 13, as amended, unless otherwise noted.

SOURCE: 33 FR 11987, Aug. 23, 1968, unless otherwise noted.

§ 248.0 Definitions.

As used in this part the terms "industry products," "industry member," "beauty salon," "beauty school," "beauty clinic," "cosmetology," "hairdressing," "barber shop," and "barber school" shall have the following meanings, respectively:

(a) *Industry products.* Items used by or marketed through barber shops, barber schools, beauty parlors, beauty salons, beauty schools and beauty clinics. (Such products embrace a wide range of beauty and barber preparations; also the many articles or items of equipment, furnishings and supplies for such aforementioned establishments.)

(b) *Industry member.* Any person, firm, corporation, organization, barber shop, beauty salon, beauty school, beauty clinic or similar establishment engaged in the manufacture, distribution, or sale (including utilization in connection with services) of industry products.

(c) *Beauty salon.* An establishment providing cosmetology and hairdressing services to the public.

(d) *Beauty school.* An institution established to render instruction in cosmetology and hairdressing.

(e) *Beauty clinic.* The segment of a beauty school furnishing the students with practical experience in hairdressing and cosmetology.

(f) *Cosmetology.* Art or practice of treating, protecting, cleaning or beautifying the skin, hair or nails of human beings, and the art or practice of treating, protecting or beautifying synthetic hair, wigs, or hair pieces to be worn by human beings.

(g) *Hairdressing.* Art or practice of treating, grooming, protecting, cleaning, beautifying or styling of hair of human beings.

(h) *Barber shop.* An establishment which provides tonsorial services.

(i) *Barber school.* An institution established to render instruction in the art of tonsorial services.

§ 248.1 Misrepresentation in general.

An industry member should not use, or cause or promote the use of, any

statement, representation, guarantee,¹ testimonial, or endorsement, by way of advertising (through newspapers, magazines, circulars, booklets, or by radio, television or any other medium), oral representation, or otherwise, which has the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public including customers receiving cosmetology, hairdressing, or tonsorial services—

(a) With respect to efficacy, permanency of the effects, medicinal or curative properties, grade, quality, quantity, substance, character, origin, size, preparation, manufacture, or distribution of any product of the industry; or

(b) Concerning the purported approval or endorsement of such product by State, Federal, medical or other authority, or

(c) In any other material respect.

NOTE: Among the provisions of this section is "false advertisement," as defined in section 15 of the Federal Trade Commission Act, of any "cosmetic" as such term is defined in the same section. Furthermore, nothing in this Part 248 is to be construed as relieving anyone of the necessity of complying with the cosmetic labeling requirements of the "Federal Food, Drug and Cosmetic Act," and the general regulations thereunder.

[Guide 1]

§ 248.2 Misrepresentation as to character of business.

An industry member should not misrepresent, directly, or indirectly, through the use of any word or term in his corporate or trade name, in his advertising, or otherwise:

(a) That he is a producer, manufacturer, wholesaler, distributor, importer, or retailer of industry products; or

(b) The character, including the nature, purpose or function, of his business or the type of services he offers.

Example: An industry member advertises his place of business as a beauty salon when

¹The Commission has adopted Guides Against Deceptive Advertising of Guarantees. See 16 CFR Part 239 for the Guides Against Deceptive Advertising of Guarantees for additional guidance with respect to guarantee and warranty representations.

in fact it is a clinic operated by a beauty school, thereby deceiving the public as to the true character of his establishment. In order to avoid such deception the industry member should clearly and conspicuously disclose that his establishment is a beauty school.

[Guide 2]

§ 248.3 Deceptive plaques and certificates.

In the course of or in connection with the distribution, promotion, or sale (including utilization in connection with services) of any industry product, an industry member should not display or place in the hands of others any plaque, emblem, seal, insignia, testimonial, or certificate which is false, misleading, or deceptive as to an industry member's professional proficiency or competence or as to his membership in any guild or industry association.

Example 1. A distributor of industry products awards a certificate to a beauty salon owner indicating that the recipient has attained a high degree of professional skill through some unusual or extended training, when in fact the award was not granted on the basis of professional competency but was given merely as an inducement to buy the products of such distributor.

Example 2. An industry member displays in his salon a seal which indicates he is a member of a guild when in fact he is not such a member.

[Guide 3]

§ 248.4 Deceptive pricing.

Members of the industry should not represent directly or indirectly in advertising or otherwise that an industry product may be purchased for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive purchasers or prospective purchasers with respect to the price of any product offered for sale; or furnish any means or instrumentality by which others engaged in the sale of industry products may make any such representation.

NOTE: The Commission's Guides Against Deceptive Pricing furnish additional guidance respecting price savings representations and are to be considered as supplementing this section. See 16 CFR Part 233 for the Guides Against Deceptive Pricing

for additional guidance with respect to price savings representations.

[Guide 4]

§ 248.5 Deceptive use and imitation of trade or corporate names, trademarks, etc.

An industry member should not use any trade name, corporate name, trademark, or other trade designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the character, name, nature, or origin of any product of the industry, or of any material used therein, or which is false or misleading in any other material respect. (See also § 248.2 of this part.) [Guide 5]

§ 248.6 False invoicing.

An industry member should not withhold from, or insert in, invoices or sales slips, any statements, or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales slips, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public in any material respect. [Guide 6]

§ 248.7 Defamation of competitors or false disparagement of their products.

An industry member should not engage in (a) the defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or (b) the false disparagement of the quality, grade, origin, use, design, performance, properties, manufacture, or distribution of the products of competitors or of their business methods, selling prices, values, credit terms, policies or services. [Guide 7]

§ 248.8 Push money.

An industry member should not pay or contract to pay anything of value to a salesperson employed by a customer of the industry member, as compensation for, or as an inducement to obtain, special or greater effort or service on the part of the salesperson in promoting the resale, including use

in connection with services, of products supplied by the industry member to the customer—

(a) When the agreement or understanding under which the payment or payments are made or are to be made is without the knowledge and consent of the salesperson's employer; or

(b) When the terms and conditions of the agreement or understanding are such that any benefit to the salesperson or customer is dependent on lottery; or

(c) When any provision of the agreement or understanding requires or contemplates practices or a course of conduct unduly and intentionally hampering sales of products of competitors of an industry member; or

(d) When, because of the terms and conditions of the understanding or agreement, including its duration, or the attendant circumstances, the effect may be to substantially lessen competition or tend to create a monopoly; or

(e) When similar payments are not accorded to salespersons of competing customers on proportionally equal terms in compliance with sections 2 (d) and (e) of the Clayton Act. (See § 248.14 of this part.)

NOTE: Payments made by an industry member to a salesperson of a customer under any agreement or understanding that all or any part of such payments is to be transferred by the salesperson to the customer, or is to result in a corresponding decrease in the salesperson's salary, are not to be considered within the purview of this § 248.8; but are to be considered as subject to the requirements and provisions of section 2(a) of the Clayton Act. (See § 248.13.)

[Guide 8]

§ 248.9 Enticing away employees of competitors.

An industry member should not willfully entice away employees or sales-contract personnel of competitors with the intent and effect of thereby hampering or injuring competitors in their business or destroying or substantially lessening competition. *Provided*, That nothing in this section shall be construed as precluding such persons from seeking more favorable employment, or as precluding employers from hiring or offering employment to em-

employees of a competitor in good faith and not for the purpose of inflicting competitive injury. [Guide 9]

§ 248.10 Inducing breach of contract.

(a) An industry member should not knowingly induce or attempt to induce the breach of existing lawful contracts between competitors and their customers or between competitors and their suppliers, or interfere with or obstruct the performance of any such contractual duties or services, under any circumstance having the capacity and tendency or effect of substantially injuring or lessening competition.

(b) Nothing in this section is intended to imply that it is improper for an industry member to solicit the business of a customer of a competing industry member; nor is the section to be construed as in anywise authorizing any agreement, understanding, or planned common course of action by two or more industry members not to solicit business from, or to sell to, the customers of either of them, or customers of any other industry member. [Guide 10]

§ 248.11 Exclusive deals.

An industry member should not contract to sell or sell any industry product, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the products of a competitor or competitors of such industry member, where the effect of such sale or contract for sale, or of such condition, agreement, or understanding, may be substantially to lessen competition or tend to create a monopoly in any line of commerce. [Guide 11]

§ 248.12 Commercial bribery.

An industry member shall not directly or indirectly give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employ-

ers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Guide 12]

§ 248.13 Discriminatory prices, rebates, discounts, etc.

(a) An industry member engaged in commerce, should not in the course of such commerce, grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce, and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and are not purchased by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use;

NOTE 1: This section does not apply to purchases by the U.S. Government for its own use.

(2) That nothing contained in this section shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which industry products are sold or delivered to different purchasers;

NOTE 2: Cost justification under the above proviso (2) depends upon net savings in cost based on all facts relevant to the transactions under the terms of such proviso. For example, if a seller regularly grants a dis-

count based upon the purchase of a specified quantity by a single order for a single delivery, and this discount is justified by cost differences, it does not follow that the same discount can be cost justified if granted to a purchaser of the same quantity by multiple orders or for multiple deliveries.

(3) That nothing contained in this section shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing contained in this section shall prevent price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned;

(5) That nothing contained in this section shall prevent the meeting in good faith of an equally low price of a competitor.

NOTE 3. Subsection 2(b) of the Clayton Act, as amended, reads as follows: "Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination. *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

NOTE 4. In complaint proceedings, justification of price differentials under paragraphs (a)(2), (4), and (5) of this section is a matter of affirmative defense to be established by the person or concern charged with price discrimination.

NOTE 5. Nothing in this section should be construed as precluding charging customers at a higher level of distribution lower prices than those charged to customers at a lower level of distribution provided that such price differential is not otherwise precluded by the foregoing provisions of this section.

For example, a seller may grant a lower price to wholesalers than to retailers to the extent that such wholesalers resell to retailers. If such wholesalers also sell at retail they may not properly be granted a price lower than the prices granted to competing retailers on that portion of the goods they sell at retail.

(b) The following are examples of price differential practices to be considered as subject to the provisions of this section when involving goods of like grade and quality which are sold for use, consumption, or resale within any place under the jurisdiction of the United States, and which are not purchased by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, as supplies for their own use, and when—

(1) The commerce requirements specified in this section are present; and

(2) The price differential has a reasonable probability of substantially lessening competition or tending to create a monopoly in any line of commerce, or of injuring, destroying, or preventing competition with the industry member or with the customer receiving the benefit of the price differential, or with customers of either of them; and

(3) The price differential is not justified by cost savings (see paragraph (a)(2) of this section); and

(4) The price differential is not made in response to changing conditions affecting the market for or the marketability of the goods concerned (see paragraph (a)(4) of this section); and

(5) The lower price was not made to meet in good faith an equally low price of a competitor (see paragraph (a)(5) of this section).

Example 1. An industry member sells supplies to one or more of his beauty school customers at a lower price than he sells to one or more of his wholesale customers who resell to a competitor or competitors of the favored beauty school or schools. The probable injury to competition resulting from such practice may occur in the resale of the supplies with or without services being furnished in connection therewith.

NOTE 6. Example 1 should not be construed as admonishing an industry member not to grant to his beauty school customers a favorable price on supplies and/or equip-

ment for use in preclinical training. However, the industry member should assure himself that the materials are to be used for the purpose intended and not diverted for use in a salon or clinic.

Example 2. An industry member invoices goods to all his customers at the same price but supplies additional quantities of such goods at no extra charge to one or more, but not to all, such customers; or supplies other goods or premiums to one or more, but not to all, such customers for which he makes no extra charge and which effects an actual price difference in favor of certain of his customers.

NOTE 1: Section 248.13 is interpretive of sections 2(a) and 2(b) of the amended Clayton Act.

[Guide 13]

§ 248.11 Advertising or promotional allowances, or services or facilities.

(a) An industry member engaged in commerce should not pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, sold or offered for sale by such member, unless such payment or consideration is made known to and is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(b) An industry member engaged in commerce should not discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale or distribution, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

NOTE 1: Subsection 2(b) of the Clayton Act, as amended, which is set forth in Note 3 in § 248.13 is applicable to this § 248.14.

(c) The following is an example of discrimination in furnishing advertis-

ing or promotional allowances or services or facilities to be considered as subject to the provisions of this section when involving goods of like grade and quality and when the industry member is engaged in commerce and the promotional allowance, or service, or facility, is paid or furnished in the course of such commerce.

Example. The furnishing by an industry member to a beauty salon of any promotional allowance, or service, or facility without making available on proportionally equal terms such assistance to all beauty salons and others who compete with the favored salon in the resale of the member's products with or without services.

NOTE 2: Proportionally equal terms means that the assistance is proportionalized on some basis which is fair to all who compete in the resale of the industry member's products. No single way to proportionalize is prescribed by law and any method that treats all who compete in the resale of the member's products on proportionally equal terms may be used.

NOTE 3: When an industry member furnishes any promotional allowance, service, or facility to any direct-buying salon he must also make such assistance available on proportionally equal terms to all salons and others who buy the member's products directly or through intermediaries and who compete with the direct-buying salon in the resale, with or without services, of the industry member's products at the same functional level of distribution. The industry member may make such assistance available directly to the competing salons and others who buy through intermediaries. He may also utilize his intermediaries to administer the promotional program, so long as he takes responsibility for seeing that the assistance is offered and otherwise made available to all salons and others who compete in the resale of the member's products with or without services.

NOTE 4: Section 248.14 is interpretive of sections 2(d) and 2(e) of the amended Clayton Act.

[Guide 14]

§ 248.15 Inducing or receiving an illegal discrimination in price, advertising or promotional allowances, or services or facilities.

(a) An industry member engaged in commerce, should not in the course of such commerce, knowingly induce or receive a discrimination in price, advertising or promotional allowances, or services or facilities, which is improper

under the foregoing provisions of §§ 248.13 and 248.14 of this part.

(b) The following are examples of inducing or receiving discriminations in price, advertising or promotional allowances or services or facilities, to be considered as subject to this section when the requisites of an improper discrimination on the part of the seller as set forth in §§ 248.13 and 248.14 of this part are present and the party receiving the discriminations knows or should know that the discriminations are illegal.

Example 1. An industry member purchases industry supplies purportedly for resale to beauty salons, and is charged a lower price than the seller charges other customers for industry supplies which they resell in beauty salons, with or without services, but the member who obtained the supplies at the lower price transfers them to a salon which he owns, and resells the supplies therein with or without services, thereby receiving a discrimination in price which is subject to the provisions of § 248.13.

Example 2. An industry member induces suppliers to contribute sums of money to defray some or all of the costs of advertising sponsored by such member and designed to promote the sale, with or without services, of the suppliers' products in the industry member's place of business, when the industry member knows or should know that the allowances for such purpose are not made available on proportionally equal terms by the same suppliers to other customers competing with the favored member, thereby receiving a discrimination in promotional allowances subject to the provisions of § 248.14.

Note: Section 248.15 is interpretive of section 2(f) of the amended Clayton Act and of section 5 of the Federal Trade Commission Act, as amended.

[Guide 15]

PART 250—GUIDES FOR THE HOUSEHOLD FURNITURE INDUSTRY

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AUTHORITY: 38 Stat. 717, as amended (15 U.S.C. 41-58).

SOURCE: 38 FR 34992, Dec. 21, 1973, unless otherwise noted.

§ 250.0 Definitions.

(a) *Industry member.* Any person, firm, corporation or organization engaged in the manufacture, offering for sale, sale or distribution of industry products as such products are herein-after defined.

(b) *Industry products.* Articles of utility, convenience or decoration which are suitable for use as furniture in a house, apartment, or other dwelling place. Such articles include, but are not limited to, all kinds and types of chairs, tables, cabinets, desks, sofas, bedsteads, chests and mirror frames. The following products, covered by sets of trade practice rules heretofore promulgated, are not to be considered as coming within the purview of this definition: bed mattresses, bedsprings, metal coils, cedar chests, mirror glass, musical instruments, radio and television receiving sets and venetian blinds. Also excluded from the purview of this part are pictures, lamps, clocks, rugs, draperies as well as appliances and fixtures such as refrigerators and air conditioners.

(c) *Exposed surfaces.* Those parts and surfaces exposed to view when furniture is placed in the generally accepted position for use. Included in this definition are visible backs of such items of furniture as open bookcases, hutches, etc.

§ 250.1 Avoiding deception and making disclosures.

(a) *In general.* Industry members should not sell, offer for sale, or distribute any industry product under any representation or circumstance, including failure to disclose material

facts, that has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to its utility, construction, composition, durability, design, style, quality, quantity or number of items, model, origin, manufacture, price, grade, or in any other material respect.

(b) *Affirmative disclosures.* Material facts concerning merchandise which, if known to prospective purchasers, would influence their decision of whether or not to purchase should be disclosed. This includes situations where deception may result from the appearance alone which in the absence of affirmative disclosures, could have the capacity and tendency or effect of misleading or deceiving. For example, veneered construction, use of plastic with simulated wood appearance, use of materials or products that simulate other materials or products used in the manufacture of furniture, or use of simulated finish or grain design, are considered to be material facts and a failure to disclose such information may be an unfair trade practice violative of section 5 of the Federal Trade Commission Act.

(1) *Where disclosures should be made.* Unless otherwise provided, any affirmative disclosure which should be made under this part, should be on the industry product, or on a tag or label prominently attached thereto, and should be of such permanency as to remain on or attached to the product until consummation of sale to the consumer. Also, affirmative disclosures should appear in all advertising relating to industry products, irrespective of the media used, whenever statements, representations or depictions are used which could create an impression that the furniture is of a certain construction or composition and which, in the absence of such disclosures, could have the capacity to mislead purchasers or prospective purchasers.

(2) *The manner of disclosure.* In all cases in which the disclosure is necessary, it should be made in close conjunction with the representation or depiction to be qualified and should be of sufficient clarity, conspicuousness, and audibility (when spoken), as to be

noted by prospective purchasers. The number of times a disclosure should be made will depend entirely upon the format and context in which it appears. As a general proposition, in catalogs and brochures advertising a suite or line of furniture it will be sufficient to make appropriately conspicuous disclosures once at the outset; however, additional disclosures should be made on any page where additional descriptive words are used which should be qualified under this part.

(3) *The form of disclosure with respect to composition.* Whenever an affirmative disclosure regarding composition should be made under this part, it may be accomplished by either describing the true composition of the product or parts thereof ("plastic", "vinyl", "marble particles with binder") or by stating that the material is not what it appears to be ("simulated wood", "imitation leather", "simulated marble"). Terms such as "molded components", "walnut plastic" or "carved effect" will not suffice to disclose that exposed surfaces are plastic, or that they are not wood.

(4)(i) *Trade names, coined names, trademarks, etc. suggestive of composition.* Any trade name, coined name, trademark, depiction, symbol or other word or term which is susceptible of more than one interpretation, one or more of which could be misleading, should be immediately qualified to remove clearly and conspicuously the misleading implication(s). For instance, a trade name such as "Dura-hyde", if used to describe a fabric-backed vinyl upholstery covering which simulates leather, should be immediately qualified to disclose (A) the true composition of the product (e.g., "fabric-backed vinyl") or (B) that the product is not leather (e.g., "simulated leather", "not leather" or "imitation leather").

(ii) *Trade designations or other representations which cannot be qualified without the qualification amounting to a contradiction should not be used.* A trade designation consisting in whole or in part of a word which denotes a kind or type of material of which the product is not in fact composed should not be used. For example, the words "hide", "skin" and

"leather" should not be used in trade names denoting nonleather products, although homophones of those words such as "hyde" may be used if qualified as provided above. Similarly, the word "wood" should not be used in a trade name of a product which does not contain wood.

(iii) Also, ambiguous or imprecise trade designations will not be sufficient to satisfy the disclosure provisions of this part. For example, the coined name "Hardiclad" used to describe molded plastic drawer fronts having the appearance of wood, is not sufficient to disclose that such parts are plastic or that they are not wood.

(c) *Illustrative examples of affirmative disclosure of composition or appearance.* The following examples are among those which, if factually correct, will meet the provisions of this section with respect to affirmative disclosures:

(1) *Disclosure of veneered construction.* "Veneered construction", "[wood name] solids and veneers", "[wood name] veneered tops, fronts and end panels" or "[wood name] veneered 5-ply construction with solid parts of [wood name]";

(2) *Disclosure of the use of plastics or other materials having the appearance of wood.* "High impact polystyrene", "door panels of polystyrene", "legs of rigid polyurethane", "walnut grained plastic tops", "parts of the exposed surfaces are of simulated wood" (to describe minor parts of the exposed surfaces of furniture), "imitation wood", "carved effects of simulated wood", "simulated wood components", "wood grained vinyl veneer", "walnut grained hardboard" or "simulated wood effect on plastic";

(3) *Simulated leather, slate, or marble.* "Vinyl", "leather look on vinyl", "simulated leather", "slate effect on plastic tops", "simulated slate", "simulated marble" or "marble dust and polyester binder";

(4) *Simulated wood grain design.* "Simulated wood grain design", "cherry grained maple", "simulated mahogany crotch on mahogany veneer", "Simulated Carpathian Elm burl" or "engraved cathedral walnut grain on hardboard";

(5) *Simulated carvings.* "Carved effect in plastic", "simulated wood carvings" or "molded polystyrene with carved look";

(6) *Hang tags or labels disclosing the use of veneers, plastic simulating wood, or simulated wood grain.* "Veneered construction, heat and stain resistant plastic tops, drawer fronts and decorative parts of rigid polyurethane", or "This furniture is made of selected hardwoods and veneers with matching plastic tops and decorative carved effects of polystyrene in dark oak finish", or "This suite is constructed of selected walnut veneers and solid pecan, and has simulated wood panels on drawers, doors, and headboards", or "Walnut veneer end panels and tops, polystyrene drawer and door fronts, and selected solid hardwood", or "This furniture is constructed of selected hardwood solids and veneers, with certain veneered surfaces having simulated grain finish to enhance their appearance" or "Solid and Veneered hardwoods with carved effects in simulated wood and simulated grain design on veneered tops in matching pecan finish".

(d) *Removal of tags or labels.* Members of the industry should not: (1) Remove, obliterate, deface, change, alter, conceal, or make illegible any information this part provides be disclosed on industry products, such as on tags or labels attached thereto, without replacing the same with a proper disclosure meeting the provisions of this part before offering for sale, sale, or distribution; or

(2) Sell, resell, distribute, or offer for sale an industry product without it being marked, tagged, or labeled and described in accordance with the provisions of this part. [Guide 1]

§ 250.2 Describing wood and wood imitations.

(a) *Solid wood construction.* Industry members should not use unqualified wood names to describe furniture unless all of the exposed surfaces are constructed of solid wood of the type named. If more than one type of solid wood is used and one of the woods is named, then all of the principal woods should be disclosed, or the extent of

the use of the wood named should be indicated. In lieu of naming the specific woods, a general designation of the type of wood, such as "hardwood" or "softwood" may be used. For example, the following representations, if factually correct, will be acceptable: "solid maple", "solid African mahogany", "walnut and pecan", "solid oak fronts", "walnut", "maple and other selected hardwoods", "fine hardwoods" and "selected hardwoods".

(b) *Wood veneers.* (1) When the exposed surfaces of furniture are of veneered and solid construction, and wood names are used to describe such furniture, the wood names should be qualified to disclose the fact of veneered construction. For example, "walnut solids and veneers" or "mahogany veneered construction" may be used when all the exposed surfaces of furniture are constructed of solid and veneered wood of the type named. When such terms as "walnut veneered construction" or "oak veneered construction" are used, it is understood that the exposed solid parts are composed of the same wood.

(2) When solid parts of furniture are of woods other than those used in veneered surfaces, either the use of such other woods should be disclosed or the location of the veneers stated. Examples: "walnut veneers and pecan solids", "mahogany veneers and African mahogany solids", "walnut veneered tops, fronts and end panels", "table tops of mahogany veneers" or "cherry veneers and selected solid hardwoods".

(c) *Wood products.* Wood names or names suggesting wood should not be used to refer to materials which, while produced from wood particles or fibers, do not possess a natural wood growth structure. Such materials, however, may be referred to by their generally accepted names, if otherwise nondeceptive, such as "hardboard", "particleboard", "chipcore" or "fiberboard", or may be referred to as "wood products".

(d) *Color or grain design finish.* When wood names are used merely to describe a color of a stain finish and/or grain design or other simulated finish applied to the exposed surfaces of furniture that is composed of some-

thing other than solid wood of the types named, it must be made clear that the wood names are merely descriptive of the color and/or grain design or other simulated finish. Terms such as "walnut finish" or "fruitwood finish" will not suffice. However, terms such as "walnut color", "fruitwood stain finish", "maple finish on birch solids and veneers", "walnut finish on walnut veneers and selected solid hardwoods", "cherry grained maple drawer fronts", "walnut finish plastic top" or "maple stained hardwoods" will be considered acceptable when factually correct and in contexts otherwise nondeceptive.

(e) *Materials simulating wood.* No wood names should be used to describe any materials simulating wood without disclosures making it clear that the wood names used are merely descriptive of the color and/or grain design or other simulated finish; nor should any trade names or coined names be employed which may suggest that such materials are some kind of wood. [Guide 2]

§ 250.3 Identity of woods.

Industry members should not use any direct or indirect representation concerning the identity of the wood in industry products that is false or likely to mislead purchasers as to the actual wood composition.

(a) *Walnut.* The unqualified term "walnut" should not be used to describe wood other than genuine solid walnut (genus *Juglans*). The term "black walnut" should be applied only to the species *Juglans nigra*.

(b) *Mahogany.* (1) The unqualified term "mahogany" should not be used to describe wood other than genuine solid mahogany (genus *Swietenia* of the *Meliaceae* family). The woods of genus *Swietenia* may be described by the term "mahogany" with or without a prefix designating the country or region of its origin, such as "Honduras mahogany", "Costa Rican mahogany", "Brazilian mahogany" or "Mexican mahogany".

(2) The term "mahogany" may be used to describe solid wood of the genus *Khaya* of the *Meliaceae* family, but only when prefixed by the word

"African" (e.g., "African mahogany desk").

(3) In naming or designating the seven non-mahogany Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis, and Bagtikan, the term "mahogany" may be used *but only* when prefixed by the word "Philippine" (e.g., "Philippine mahogany table"), due to the long standing usage of that term. Examples of improper use of the term "mahogany" include reference to Red Lauan as "Lauan mahogany" or to White Lauan as "Blond Lauan mahogany". Such woods, however, may be described as "Red Lauan" or "Lauan" or "White Lauan", respectively. The term "Philippine mahogany" will be accepted as a name or designation of the seven woods named above. Such term shall not be applied to any other wood, whether or not grown on the Philippine Islands.

(4) The term "mahogany", with or without qualifications, should not be used to describe any other wood except as provided above. This applies also to any of the woods belonging to the Meliaceae family, other than genera *Swietenia* and *Khaya*.

(c) *Maple*. The terms "hard maple", "rock maple", "bird's-eye maple", "Northern maple" or other terms of similar nature should not be used to describe woods other than those known under the lumber trade names of Black Maple (*Acer nigrum*) and Sugar Maple (*Acer saccharum*).

NOTE: Nothing in this section should be construed as prohibiting the nondeceptive use of wood names to describe the color, stain, simulated finish or appearance of industry products, provided that appropriate qualifications are made in accordance with provisions in § 250.2(d). [Guide 3]

§ 250.4 Leather and leather imitations.

(a) Members of the industry should not make any direct or indirect representation concerning furniture or parts thereof covered with leather, or other material which simulates leather, which is false or misleading.

(b) Practices which should not be used under this section include, but are not limited to, the use of any trade

name, coined name, trademark,¹ or other word or term, or any depiction or device, which could have the capacity and tendency or effect of misleading prospective purchasers into believing that furniture is covered in whole or in part with the skin or hide of an animal, or that the covering of furniture is leather, top grain leather, or split leather, when such is not the case. When a furniture covering is made from ground, shredded, pulverized or powdered leather, industry members should affirmatively disclose, in a manner provided for under § 250.1 of this part, either the true composition thereof, or the fact that it is not leather.

(c) In the case of non-leather material having the appearance of leather, industry members should conspicuously disclose facts concerning the composition thereof either by identifying the composition of the product (e.g., "vinyl covering", "fabric-backed vinyl", "upholstered in plastic") or by a disclosure that the product is not leather (e.g., "imitation leather", "not leather"), as provided for under § 250.1 of this part. [Guide 4]

§ 250.5 Outer coverings.²

(a) In connection with the sale of furniture, members of the industry should not use any direct or indirect representation concerning the outer covering thereof which:

(1) Is false (e.g., using the term "Mohair" to describe a fabric not produced from fibers derived from the angora goat); or

¹ See § 250.1(b)(4).

² Section 12(a)(2) of the Textile Fiber Products Identification Act (72 Stat. 1717; 15 U.S.C. 70) specifically exempts "outer coverings of furniture" from the application of the Act. Section 14 of the same Act provides that the Act "shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States." Therefore, corrective action involving deceptive practices in the sale of furniture would be initiated under the authority of Section 5 of the Federal Trade Commission Act which prohibits "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

(2) Has the capacity and tendency or effect of deceiving furniture purchasers (e.g., by telling a half-truth, such as using the unqualified word "Nylon" to describe a blend of nylon and other fibers).

(b) When (if) any identifying reference is made in *advertising* to an outer covering made of a mixture of different kinds of fibers, each constituent fiber present in substantial quantity (at least 5 percent) should be designated in the order of its predominance by weight (e.g., "cotton and nylon") in a manner provided for in § 250.1 of this part. If a fiber so designated is not present in a substantial quantity (less than 5 percent) the percentage thereof should be stated (e.g., "cotton, rayon, 3 percent nylon").

(c) When (if) any identifying reference is made on a tag or label to an outer covering made of a mixture of different kinds of fibers, each and every kind of fiber present in such outer covering should be identified by showing the fiber content with percentages of the respective fibers in order of their predominance by weight (e.g., "55 percent Cotton, 45 percent Rayon"). In the case of pile fabrics, identification of the fiber content should be made on a tag or label by stating:

(1) The fiber content of the face or pile and of the back or base, with percentages of the respective fibers in order of their predominance by weight and the respective percentages of the face and back showing the ratio between face and back (e.g., "Face 60 percent Rayon, 40 percent Nylon—Back 100 percent Cotton; Back constitutes 80 percent of fabric and face 20 percent"); or

(2) The percentages of the fibers of the face or pile and the back or base in relation to the total weight of the fabric (e.g., "40 percent Cotton, 40 percent Rayon, 20 percent Nylon" to describe a fabric having an all nylon pile constituting 20 percent of the total weight backed by a 50 percent—50 percent blend of cotton and rayon).

(d) No representation should be made, directly or by implication, that an upholstery fabric has been tested unless:

(1) Actual tests have been conducted by persons qualified to perform and evaluate tests on upholstery fabrics; and

(2) Such tests were devised and conducted so as to constitute a reasonable basis for evaluating the fabric for use as a furniture covering; and

(3) Such representation is accompanied by a conspicuous and accurate statement, in layman's language, of the actual test results. (See Note following paragraph (e) of this section.)

(e) No direct or indirect representation should be made concerning any performance characteristic of any upholstery fabric unless at the time such representation is made the advertiser has in his possession a reasonable basis therefor, which may consist of competent scientific tests and/or other appropriate substantiating materials.

NOTE: On demand by the Commission any advertiser who makes representations concerning tests or performance characteristics of fabrics should submit documentation of such tests, studies, and other data (as he had in his possession prior to the time the claims were made), which purport to substantiate the truth of such representations. Accurate records of all such documentation should be maintained for three years from the date such representations were last disseminated.

[Guide 5]

[38 FR 34992, Dec. 21, 1973; 39 FR 1833, Jan. 15, 1974]

§ 250.6 Stuffing (including filling, padding, etc.).

Members of the industry should not make any direct or indirect representation relating to the stuffing of furniture which:

(a) Is false (e.g., describing cotton stuffing as "wool", or urethane foam as "latex foam rubber"); or

(b) Has the capacity and tendency or effect of deceiving or misleading (e.g., by telling a half-truth, such as describing shredded or flaked foam rubber stuffing as "foam rubber" without disclosing, in a manner provided for under § 250.1 of this part, that it is shredded or flaked, or describing any non-latex foam cushion as "foam" without disclosing the kind of foam used, such as "urethane foam").

(1) The unqualified terms "Foam", "Latex" or "Latex Foam Rubber" or other terms of similar import, should not be used as descriptive of any part of the filling of an upholstery which does not consist of one or more homogeneous pads of latex foam rubber.

(2) When an upholstered industry product contains filling material consisting of a top layer of homogeneous latex foam rubber, or of other type of stuffing which is of substantial thickness, and another layer or layers of other material, terms such as "latex foam rubber", "polyurethane foam" or other terms which accurately describe the composition of such top layer may be used as descriptive thereof, *provided, however*, That in immediate conjunction therewith, nondeceptive disclosure is made of the fact that only a part of such filling material is of latex foam rubber or such other type of designated stuffing.

(3) When the filling is composed, in whole or in part, of latex foam rubber, polyurethane foam, or other type of stuffing which has been shredded, flaked, or ground, full and nondeceptive disclosure should be made of such fact in immediate conjunction with any such term irrespective of whether the pieces or shreds of latex foam rubber, polyurethane foam, or other type of stuffing are in loose form or are held together by glue or some other adhesive agent.

NOTE: This section is promulgated under the Federal Trade Commission Act for the purposes of interpreting requirements of such Act and to assist in the general enforcement of the Act. The section is not to be construed as relieving industry members from full compliance with applicable State and local legal requirements.

[Guide 6]

§ 250.7 Origin and style of furniture.

(a) Industry members should not make any direct or indirect representation which is false or likely to deceive prospective purchasers of furniture as to its origin, either domestic or foreign. For example:

(1) Furniture manufactured in the United States should not be unqualifiedly described as "Danish", "Spanish", "Italian", "English", or by any other unqualified terms suggesting

foreign origin, unless the fact that such furniture was manufactured in the United States is clearly and conspicuously disclosed in advertising and on the furniture by means of such statements as "Made in U.S.A." or "manufactured by" followed by the name and address of the domestic manufacturer.

(2) When appropriate, furniture may be described by such terms as "Danish Style", "Italian Design", "Spanish Influence", "English Tradition" or by any other terms accurately descriptive of a generally recognized furniture style.

(3) Because of general understanding by the furniture buying public, terms such as "French Provincial", "Italian Provincial", "Chinese Chipendale" and "Mediterranean" are considered to have acquired a secondary meaning as descriptive of the styles of furniture so described. Thus, unqualified use of such terminology, when appropriate, would not be considered deceptive.

(4) Furniture should not be represented by trade name or otherwise as being manufactured in the Grand Rapids (Michigan) area, or in any other furniture producing area, when such is not the fact.

(b) In connection with the sale of furniture of foreign manufacture, members of the industry should clearly and conspicuously disclose the foreign country of origin, when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers of such products. The disclosure of foreign origin, when required, should be in the form of a legible marking, stamping, or labeling on the outside of the furniture, and shall be of such size, conspicuousness and degree of permanency, as to be and remain noticeable and legible upon casual inspection until consumer purchase. [Guide 7]

§ 250.8 Deception as to being "new".

(a) Industry members should not make any direct or indirect representation that an industry product is new unless such product has not been used and is composed entirely of unused materials and parts.

(b) In connection with the sale of furniture which has the appearance of being new but which contains used materials or parts, such as springs, latex foam rubber stuffing, or hardware, members of the industry should conspicuously disclose, in a manner provided for in § 250.1 of this part, such fact (e.g., "cushions made from reused shredded latex foam rubber").

(NOTE: See also § 250.9.)

[Guide 8]

§ 250.9 Misuse of the terms "floor sample", "discontinued model", etc.

(a) Representations that furniture is a "floor sample", "demonstration piece", etc., should not be used to describe "trade-in", repossessed, rented, or any furniture except that displayed for inspection by prospective purchasers at the place of sale for the purpose of determining their preference and its suitability for their use.

(b) Furniture should not be described as "discontinued" or "discontinued model" unless the manufacturer has in fact discontinued its manufacture or the industry member offering it for sale will discontinue offering it entirely after clearance of his existing inventories of furniture so described. [Guide 9]

§ 250.10 Passing off through imitation or simulation of trademarks, trade names, etc.

Members of the industry should not mislead or deceive purchasers by passing off the products of one industry member as and for those of another through the imitation or simulation of trademarks, trade names, brands, or labels. [Guide 10]

§ 250.11 Misrepresentation as to character of business.

Members of the industry should not represent, directly or by implication, in advertising or otherwise, that they produce or manufacture products of the industry, or that they own or control a factory making such products, when such is not the fact, or that they are a manufacturer, wholesale distributor or a wholesaler when such is not the fact, or in any other manner mis-

represent the character, extent, or type of their business. [Guide 11]

§ 250.12 Commercial bribery.

Members of the industry should not give, or offer to give, or permit or cause to be given, directly or indirectly, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Guide 12]

§ 250.13 Other parts in this Title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, Part 233, Guides Against Deceptive Advertising of Guarantees, Part 239, and Guides Against Bait Advertising, Part 238, all of which have general application and furnish additional guidance for members of the Household Furniture Industry. Members of this industry should comply with those parts.

PART 251—GUIDE CONCERNING USE OF THE WORD "FREE" AND SIMILAR REPRESENTATIONS

§ 251.1 The guide.

(a) *General.* (1) The offer of "Free" merchandise or service is a promotional device frequently used to attract customers. Providing such merchandise or service with the purchase of some other article or service has often been found to be a useful and valuable marketing tool.

(2) Because the purchasing public continually searches for the best buy, and regards the offer of "Free" merchandise or service to be a special bargain, all such offers must be made with extreme care so as to avoid any possibility that consumers will be

misled or deceived. Representative of the language frequently used in such offers are "Free", "Buy 1-Get 1 Free", "2-for-1 Sale", "50% off with purchase of Two", "1c Sale", etc. (Related representations that raise many of the same questions include "— Cents-Off", "Half-Price Sale", "½ Off", etc. See the Commission's "Fair Packaging and Labeling Regulation Regarding 'Cents-Off' and Guides Against Deceptive Pricing.")

(b) *Meaning of "Free".* (1) The public understands that, except in the case of introductory offers in connection with the sale of a product or service (See paragraph (f) of this section), an offer of "Free" merchandise or service is based upon a regular price for the merchandise or service which must be purchased by consumers in order to avail themselves of that which is represented to be "Free". In other words, when the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) The term "regular" when used with the term "price", means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a "Free" or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period. For consumer products or services which fluctuate in price, the "regular" price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period. Except in the case of introductory offers, if no substantial sales were made, in fact, at the "regular" price, a

"Free" or similar offer would not be proper.

(c) *Disclosure of conditions.* When making "Free" or similar offers all the terms, conditions and obligations upon which receipt and retention of the "Free" item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of "Free" merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, is not regarded as making disclosure at the outset. However, mere notice of the existence of a "Free" offer on the main display panel of a label or package is not precluded provided that (1) the notice does not constitute an offer or identify the item being offered "Free", (2) the notice informs the customer of the location, elsewhere on the package or label, where the disclosures required by this section may be found, (3) no purchase or other such material affirmative act is required in order to discover the terms and conditions of the offer, and (4) the notice and the offer are not otherwise deceptive.

(d) *Supplier's responsibilities.* Nothing in this section should be construed as authorizing or condoning the illegal setting or pricing of retail prices by a supplier. However, if the supplier knows, or should know, that a "Free" offer he is promoting is not being passed on by a reseller, or otherwise is being used by a reseller as an instrumentality for deception, it is improper for the supplier to continue to offer the product as promoted to such reseller. He should take appropriate steps to bring an end to the deception, including the withdrawal of the "Free" offer.

(e) *Resellers' participation in suppliers' offers.* Prior to advertising a "Free" promotion, a supplier should offer the product as promoted to all competing resellers as provided for in the Commission's "Guides for Adver-

tising Allowances and Other Merchandising Payments and Services." In advertising the "Free" promotion, the supplier should identify those areas in which the offer is not available if the advertising is likely to be seen in such areas, and should clearly state that it is available only through participating resellers, indicating the extent of participation by the use of such terms as "some", "all", "a majority", or "a few", as the case may be.

(f) *Introductory offers.* (1) No "Free" offer should be made in connection with the introduction of a new product or service offered for sale at a specified price unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with the "Free" offer.

(2) In such offers, no representation may be made that the price is for one item and that the other is "Free" unless the offeror expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with a "Free" offer.

(g) *Negotiated sales.* If a product or service usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another product or service is being offered "Free" with the sale. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(h) *Frequency of offers.* So that a "Free" offer will be special and meaningful, a single size of a product or a single kind of service should not be advertised with a "Free" offer in a trade area for more than 6 months in any 12-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a "Free" offer should not exceed 50 percent of the total volume of his sales of

the product, in the same size, in the area.

(i) *Similar terms.* Offers of "Free" merchandise or services which may be deceptive for failure to meet the provisions of this section may not be corrected by the substitution of such similar words and terms as "gift", "given without charge", "bonus", or other words or terms which tend to convey the impression to the consuming public that an article of merchandise or service is "Free".

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[36 FR 41517, Nov. 10, 1971]

PART 252—GUIDES FOR LABELING, ADVERTISING, AND SALE OF WIGS AND OTHER HAIRPIECES

Sec.

252.0 Definitions.

252.1 Misrepresentation (general).

252.2 Disclosure of hair composition.

252.3 Disclosure of foreign origin.

252.4 Flammability.

252.5 Use of terms such as "hair", "natural hair", "real hair", etc., and trade names.

252.6 Disclosure relating to used industry products or parts thereof.

252.7 Representations as to "Handmade", etc.

252.8 Representations as to "Custom-made", etc.

252.9 Representations as to color.

252.10 Representations as to style.

252.11 Representations as to "virgin" hair.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 35 FR 12718, Aug. 11, 1970, unless otherwise noted.

EDITORIAL NOTE: See 36 FR 18078, Sept. 9, 1971, for a statement of enforcement policy.

§ 252.0 Definitions.

(a) "Industry Member" means any person, firm, corporation, or organization engaged in the manufacture, sale, or distribution of any industry product as defined below.

(b) "Industry Product" means any kind or type of lady's wig, wiglet, fall, chignon, or other hairpiece and any kind or type of man's toupee or other hairpiece.

(c) "Hair Composition" means the type of hair fiber contained in an industry product. Hair composition may consist of, or be a combination of,

three basic types of fiber, namely, human hair, animal hair, and artificial hair.

§ 252.1 Misrepresentation (general).

An industry product should not be labeled, advertised, or otherwise represented in any manner which may have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the composition, quality, durability, construction, weight, length, size, fit, color, set, ability to accept a set or be reset, style, ease of styling, maintenance, service, guarantee, origin, price, or any other feature of such product. [Guide 1]

§ 252.2 Disclosure of hair composition.

Disclosure of hair composition of an industry product should be made by label attached to the product and in all advertising relating to such product. If the hair composition consists of more than one of the basic types of fiber, e.g., human hair and artificial hair, then the percentage of each contained therein should be set forth on the label attached to the product and in all advertising relating to the product.

NOTE 1: A disclosure made in accordance with this section should be clear and conspicuous, and labels bearing such disclosure should be attached to the product with sufficient permanency so as to remain thereon until sale to the ultimate purchaser.

NOTE 2: The percentage of each type of hair fiber contained in an industry product may be based on (1) the ratio of the weight of each type of hair fiber to the total weight of hair fiber in the product or (2) the ratio of the number of hair fibers of each type to the total number of hair fibers in the product. Under the latter method, a representative sample of the hair fibers contained in a product may be used to determine the percentage of each type of hair fiber.

NOTE 3: Disclosure of artificial hair may be made with such terms as "simulated

hair", "man-made hair", "imitation hair", or with terms of similar import, or with the generic name of the material itself, or with such other term or name as will clearly disclose the artificial nature of the hair.

[Guide 2]

§ 252.3 Disclosure of foreign origin.

(a) *Labeling.* Disclosure of foreign origin of the hair in an industry product should be made by label attached to the product. In the case of animal hair or synthetic hair, the foreign country of origin should be disclosed. In the case of human hair, the foreign country of origin or foreign area of origin should be disclosed. An example of acceptable labeling, assuming the product is made entirely of human hair from "X" country, would be "Human Hair from 'X' country", or, assuming "X" country is European, "Human Hair from Europe".

NOTE 1: A disclosure of the foreign area of origin of the human hair in an industry product may be made with such terms as "European", "Asian", "Oriental", or with such other term or name as will clearly disclose the foreign area of origin.

NOTE 2: If the hair composition of an industry product consists of hair from more than one foreign country or area, then the percentages from each country or area contained therein should be set forth on the label attached to the product. For guidance with respect to the statement of percentages, see Note 2 under § 252.2.

NOTE 3: A disclosure made in accordance with this section should be clear and conspicuous, and labels bearing such disclosure should be attached to the product with sufficient permanency so as to remain thereon until sale to the ultimate purchaser.

(b) *Mail order advertising.* The disclosure of foreign country of origin or foreign area of origin of the hair in an industry product, indicated in the labeling provisions in paragraph (a) of this section, should also be made in all mail order advertising.

(c) *Other advertising.* A disclosure of foreign country of origin or foreign area of origin of the hair in an industry product need not be made in other advertising unless in the absence of disclosure a purchaser or prospective purchaser may likely be deceived. If such advertising contains any representation, whether affirmative or implied, concerning origin of the prod-

¹All of the Commission's general Guides, including its Guides Against Deceptive Pricing, Guides Against Bait Advertising, and Guides Against Deceptive Advertising or Guarantees, are applicable to the practices of this industry. Those Guides have been codified under Title 16, Parts 233, 238, and 239, respectively, of the U.S. Code of Federal Regulations.

uct, or any part thereof, then, the disclosure indicated in the labeling provision in paragraph (a) of this section should be made. The following examples are set forth as guidance to advertisers.

Example 1. An industry product made in "X" country of hair from "Y" country should not be advertised as an "X" country wig, or with terms of similar import, unless accompanied by clear and conspicuous disclosure of the foreign country or area of origin of the hair, in accordance with the labeling provision (a) of this section.

Example 2. An industry product made in Europe of non-European hair should not be advertised as "European manufactured", "European processed", "European wig", or with terms of similar import, unless accompanied by clear and conspicuous disclosure of the foreign country or area of origin of the hair, in accordance with the labeling provision (a) of this section.

Example 3. Regardless of country of manufacture, an industry product made of non-European hair should not be advertised with such terms as "European Texture", or with terms of similar import which suggest that the product contains European hair.

Example 4. An industry product manufactured in the United States of imported hair ("X" country) should not be advertised as an "American Wig" or with terms of similar import, unless accompanied by clear and conspicuous disclosure of the foreign country or area of origin of the hair, in accordance with the labeling provision (a) of this section.

[Guide 3]

§ 252.4 Flammability.

An industry product, which is so highly flammable as to be dangerous when worn by individuals, should not be manufactured for sale, offered for sale, sold, or distributed in the United States, or imported into the United States.

NOTE 1: The Commission considers industry products to be subject to the requirements of the Flammable Fabrics Act (15 U.S.C. section 1191, as amended). The flammability standard for industry products is Commercial Standard 191-53 or other subsequently promulgated standard of flammability pertaining to such products which may be established by the Secretary of Commerce pursuant to section 4 of the Act. Copies of the Act and/or the Commercial Standard are available upon request.

NOTE 2: The prohibitions of the Flammable Fabrics Act apply to industry products

which fail the flammability standard either before or after washing and/or drycleaning

[Guide 4]

§ 252.5 Use of terms such as "hair", "natural hair", "real hair", etc., and trade names.

The unqualified term "hair", and the terms "natural hair", "true hair", "genuine hair", "real hair", and terms of similar import, as well as trade names which have the capacity of misleading a purchaser or prospective purchaser into believing that an industry product is made of human hair, should not be used to describe an industry product containing either animal hair or artificial hair. [Guide 5]

§ 252.6 Disclosure relating to used industry products or parts thereof.

(a) An industry product which has been previously used by a consumer on a trial basis or otherwise, and then returned, should not be offered for sale or resale without clear and conspicuous disclosure of such fact by label attached thereto and in all advertising relating to such product. The label disclosing prior use should be attached to the product with sufficient permanency so as to remain thereon until sale to the ultimate purchaser.

NOTE: Sellers should maintain adequate inventory control records that reflect the disposition of returned merchandise. Maintenance of inventory control records should enable sellers to demonstrate that returned merchandise was not placed in inventory and sold or resold without disclosing the fact of its prior use.

(b) An industry product which contains hair or other components subjected to prior use in another industry product should not be advertised or otherwise offered for sale without clear and conspicuous disclosure of such fact. Disclosure should be made in accordance with paragraph (a) of this section. [Guide 6]

§ 252.7 Representation as to "Handmade", etc.

An industry product should not be represented as "Handmade", or with terms of similar import, unless the entire process of joining or stitching

the hair to the foundation is performed by hand. [Guide 7]

§ 252.8 Representations as to "Custom-made", etc.

An industry product should not be described with such terms as "Custom-made", "Customized", "Personalized", or with terms of similar import, unless such product is to be (a) designed and structured on the basis of actual personal measurements of the prospective purchaser, and (b) dyed or made of a mixture of precolored hair stock to match a color meeting the personal requirements of such purchaser. [Guide 8]

§ 252.9 Representations as to color.

An industry product should not be described with such terms as "Custom-colored", "Exact match", "personalized color", or with terms of similar import, unless the hair contained therein is to be dyed or made of a mixture of precolored hair stock to match a color meeting the personal requirements of the purchaser. [Guide 9]

§ 252.10 Representations as to style.

An industry product should not be represented in any manner, whether through advertising text, depictions, or otherwise, that may have the capacity to deceive purchasers or prospective purchasers into believing that such product is styled or capable of being styled, or set or capable of being set or reset, in a certain manner, fashion or "hairdo" when such is not the fact. [Guide 10]

§ 252.11 Representations as to "virgin" hair.

An industry product should not be described as containing "virgin" hair, unless the hair contained therein is human hair and has never been bleached, dyed or permanented. [Guide 11]

PART 253—GUIDES FOR THE FEATHER AND DOWN PRODUCTS INDUSTRY

Sec.

253.1 Definitions.

253.2 Misrepresentation in general.

Sec.

253.3 Use of trade names, symbols, depictions, etc.

253.4 Misuse of the term "Tan-O-Quill-QM".

253.5 Disclosure of filling material.

253.6 Tolerances in filling material.

253.7 Crushed feathers.

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253.9 Secondhand filling material.

253.10 Cleanliness of filling material.

253.11 Disclosure as to size.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended 721; 15 U.S.C. 45, 46.

SOURCE: 36 FR 20744, Oct. 29, 1971, unless otherwise noted.

§ 253.1 Definitions.

(a) *Industry products.* For the purposes of this part the term "industry products" means and includes all pillows, cushions, comforters, sleeping bags, wearing apparel, and similar products which are wholly or partially filled with feathers or down, and all bulk stocks of processed feathers or down intended for use or used in the manufacture of such products.

(b) *Industry members.* All persons, firms, corporations, and organizations engaged in the processing, manufacture, distribution, or marketing of any industry product are considered to be industry members.

(c) *Filling material.* Means the contents of an industry product including feathers and down of any kind or type.

(d) *Down.* Means the undercoating of waterfowl, consisting of clusters of light, fluffy filaments, i.e., barbs, growing from the quill point but without any quill shafts.

(e) *Plumules.* Means downy waterfowl plumage with under developed soft and flaccid quill with barbs indistinguishable from those of down.

(f) *Down fibers.* Means the detached barbs from down and plumules and the detached barbs from the basal end of waterfowl quill shaft which are indistinguishable from the barbs of down.

(g) *Feathers.* Means the plumage or out-growth forming the contour and external covering of fowl which are whole in structure and which have not been processed in any manner other than by washing, dusting, chemical treatment, and sanitizing.

(h) *Waterfowl feathers.* Means feathers derived from ducks and geese.

(i) *Nonwaterfowl feathers or landfowl feathers.* Means feathers derived from chickens, turkeys, and other landfowl.

(j) *Quill feathers.* Means feathers which are over 4 inches in length or which have a quill point exceeding six-sixteenths of an inch in length.

(k) *Feather fiber.* Means the detached barbs of feathers which are not joined or attached to each other.

(l) *Crushed feathers.* Means feathers which have been processed by a curling, crushing, or chopping machine which has changed the original form of the feathers without removing the quill. The term also includes the fiber resulting from such processing.

(m) *Damaged feathers.* Means feathers which have been broken, damaged by insects, or otherwise materially injured.

(n) *Residue.* Means quill pith, quill fragments, trash or foreign matter. [Guide 1]

§ 253.2 Misrepresentation in general.

(a) An industry product should not be labeled, advertised, or otherwise represented in any manner which may have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning its filling material, covering, composition, quality, processing, testing, manufacture, durability, size, weight, maintenance, cleanliness, construction, warmth, moisture resistance, color, guarantee, origin, price, or any other feature of such product.

(b) Coverings of industry products should be labeled in accordance with the requirements of the Textile Fiber Products Identification Act and the Wool Products Labeling Act. [Guide 2]

§ 253.3 Use of trade names, symbols, depictions, etc.

A trade name, symbol, depiction, or any other kind of representation, should not be used in labeling, in advertising, or in any other kind of promotion relating to an industry product, when such representation has the capacity and tendency or effect of misleading or deceiving purchasers or pro-

spective purchasers into believing that the product is composed:

(a) In whole or in part of feathers and down, or feathers, or down, when such is not the fact; or

(b) In whole or in part of feathers or down from a particular type of fowl when such is not the fact; or

(c) That the product has been given chemical treatment to improve its physical or chemical properties when such is not the fact. [Guide 3]

§ 253.4 Misuse of the term "Tan-O-Quil-QM".

(a) The term "Tan-O-Quil-QM" or any words or phrases suggestive thereof should not be used in any labeling or advertising respecting an industry product in any manner which may have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into believing that the product or any of its filling material has been treated by the Tan-O-Quil-QM process unless in fact all of the filling material in that product has been treated by the Tan-O-Quil-QM process developed by the Clothing and Organic Materials Laboratory, U.S. Army Natick Laboratories, Natick, Mass., in accordance with applicable U.S. Government specifications (this process is described in Technical Report 69-37-CM, "Tan-O-Quil-QM Treatment for Feathers and Down," dated August 1968).

(b) When the Tan-O-Quil-QM treatment has been applied to all of the filling materials contained in an industry product, the term "Tan-O-Quil-QM" may be used on the label, and the label should include a statement that the product has been so treated in accordance with the applicable U.S. Government specification showing the number thereof. [Guide 4]

§ 253.5 Disclosure of filling material.

(a) *Labeling.* An industry product should be labeled as to the kind or type of filling material contained therein and when the filling material consists of a mixture of more than one kind or type, then the proportion of each should be disclosed in the order of predominance, the largest proportion first.

§ 253.6

(b) *Advertising.* Disclosure of the kind or type of filling material contained in an industry product need not be made in advertising unless in the absence of disclosure a purchaser or prospective purchaser may likely be deceived. Thus, if advertising contains any representation, whether affirmative or implied, concerning the nature of the filling material, then disclosure should be made in accordance with paragraph (a) of this section.

(c) *Bulk stocks.* Invoices pertaining to bulk stocks of processed feathers and down should disclose the kind or type of feathers and down contained therein, and if more than one kind or type is contained in the bulk stock then the proportion of each should be disclosed in the order of predominance, the largest proportion first.

(d) *Manner and form of disclosures.* The disclosures described in paragraphs (a), (b), and (c) of this section should be made in accordance with the following instructions.

(1) Disclosures with respect to the kind or type of feathers and down by use of any of the terms listed and defined above will be considered proper provided such products conform to the definitions set forth for such term, except that if the term "nonwaterfowl" or "landfowl" is used, it should be accompanied by the name of the fowl from which the products were obtained, e.g., "chicken" or "turkey."

(2) Disclosures made in accordance with this part should be clear and conspicuous, and labels bearing such disclosures should be attached to the product with sufficient permanency so as to remain thereon until after sale to the ultimate purchaser.

(3) The proportion or percentage of a particular kind or type of feathers or down in an industry product should be determined by the relationship between the avoirdupois weight that the particular kind or type bears to the total avoirdupois weight of the filling material in the product. [Guide 5]

§ 253.6 Tolerances in filling material.

(a) *Down products.* The term "down" may be used to designate any industry product containing the following filling material:

	Percent
(1) Down: plumes, and down fiber (minimum)	80
Consisting of	
Down and plumes (minimum)	70
Down fiber (maximum)	10
(2) Remainder	20
Consisting of	
Down fiber, waterfowl feather fiber and waterfowl feathers, and—	
Nonwaterfowl feathers and nonwaterfowl feather fiber (maximum)	2
Residue (maximum)	2

(b) *Waterfowl feather products.* The term "waterfowl feathers" may be used to designate any plumage product containing the following filling material which is free of quill and crushed feathers:

	Percent
Waterfowl feathers (minimum)	80
Nonwaterfowl feathers (maximum)	8
Residue (maximum)	2

(c) *Percentage claims.* An industry member should not misrepresent directly or indirectly the percentage of down contained in an industry product. Illustratively,

(1) A product should not be designated as "100 percent down," "all down," "pure down," or by other terms of similar import unless it in fact contains only down without regard to the tolerance set forth in this section.

(2) A product should not be represented to contain a certain percentage of feathers or down unless it in fact contains the stated percentage with due regard to the tolerances set forth in this section.

(d) *Designation of species.* An industry product may be designated by the name of a waterfowl species if a minimum of 90 percent of the waterfowl plumage contained therein is of that species.

(e) *Testing.* Tests to determine the composition of the filling material in an industry product should be conducted in accordance with Federal Standard 148a, dated December 10, 1964, entitled "Classification, Identification, and Testing of Feather Filling Material."

(4) *Adulteration.* The tolerances set forth in this section are not to be construed to permit intentional adulteration. [Guide 6]

§ 253.7 Crushed feathers.

An industry product which contains crushed feathers should be labeled with a clear and conspicuous disclosure of that fact. A crushed feather product should not contain residue in excess of 5 percent of the weight of the crushed feathers contained therein. [Guide 7]

§ 253.8 Damaged feathers.

An industry product which contains damaged feathers in an amount in excess of 2 percent of the total weight of the filling material should be labeled with a clear and conspicuous disclosure that it contains damaged feathers. [Guide 8]

§ 253.9 Secondhand filling material.

(a) An industry product which contains any filling material which has previously been used should not be offered for sale unless a clear and conspicuous disclosure of that fact is made on the label thereof and in all advertising and invoices relating to such product.

(b) In making the disclosure referred to in paragraph (a) of this section the term "secondhand" may be used. However, such terms as "reworked," "reprocessed," or terms of similar import should not be used unless they are accompanied by a clear and conspicuous statement that such material is not new or has previously been used. [Guide 9]

§ 253.10 Cleanliness of filling material.

(a) An industry product which contains filling materials which have not been cleaned so as to meet the standard set forth in paragraph (b) of this section should not be offered for sale or sold.

(b) A test such as that reflected in Federal Standard 148a, dated December 10, 1934, entitled "Classification, Identification, and Testing of Feather Filling Material," should be used to determine whether feathers and down have been properly cleaned. Feather and down material having an oxygen

number exceeding 20 grams of oxygen per 100.000 grams of sample should be presumed not to have been properly cleaned. [Guide 10]

§ 253.11 Disclosure as to size.

(a) *Sleeping bags.* The sizes of sleeping bags should be disclosed by labeling and such sizes should be expressed in terms of the finished length and width measurements of the bag in inches qualified by the words "Finished Size". If any representation of the "Cut Size" or the dimension of the materials used in the construction of sleeping bags, are made in labeling, advertising, marking, or otherwise, the provisions of the Commission's Trade Regulation Rule on the "Advertising and Labeling as to Size of Sleeping Bags" should be followed (see Part 400 of this chapter).

(b) *Comforters, etc.* The sizes of comforters and other similar industry products should be disclosed by labeling and such sizes should be expressed in terms of the finished length and width measurements in inches exclusive of any fringe ornamentation.

(c) *Pillows, cushions, etc.* The sizes of pillows, cushions, and other similar industry products, when disclosed by labeling, should be expressed in terms of finished measurements in inches qualified by the words "Finished Size." This statement may be followed in parentheses by a notation of product measurement in inches prior to finishing, such parenthetical expression to include the phrase "Cut Size." Thus, an example of proper size marking when a pillow has a finished size of 21" x 27" and a cut size of 22" x 28", and disclosure is made of the cut size, would be:

Finished Size 21" x 27" (Cut Size 22" x 28").

[Guide 11]

PART 254—GUIDES FOR PRIVATE VOCATIONAL AND HOME STUDY SCHOOLS

Sec.

254.1 Definitions.

254.2 Deceptive trade or business names.

254.3 Misrepresentation of extent or nature of accreditation or approval.

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254.4 Misrepresentation of facilities, services, qualifications of instructors, and status.

254.5 Misrepresentation of enrollment qualifications or limitations.

254.6 Deceptive use of diplomas, degrees, or certificates.

254.7 Deceptive sales practices.

254.8 Deceptive pricing and misuse of the word "free."

254.9 Deceptive or unfair collection and credit practices.

254.10 Affirmative disclosure prior to enrollment.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

SOURCE: 37 FR 9665, May 16, 1972, unless otherwise noted.

§ 254.1 Definitions.

(a) *Industry member.* Any person, firm, corporation, or organization engaged in the operation of a privately owned school which offers resident or correspondence courses or training or instruction purporting to prepare or qualify individuals for employment in any occupation or trade or in work requiring mechanical, technical, artistic, business, or clerical skills or which is for the purpose of enabling a person to improve his appearance, social aptitude, personality, or other attributes is considered to be an industry member. However, the term "industry member" shall not include resident primary or secondary schools or institutions of higher education which offer at least a 2-year program of accredited college level studies for resident students which is generally acceptable for credit toward a bachelor's degree.

(b) *Accredited.* For the purpose of this part the term "accredited" means that a course or school to which the term is applied has been evaluated and found to meet established criteria by an accrediting agency or association recognized by the U.S. Commissioner of Education of the U.S. Department of Health, Education, and Welfare, as reliable authority as to the quality of the training offered.

(c) *Approved.* For the purpose of this part, the term "approved" means that a school or course has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or course to

which the term is applied. It is not and should not be used interchangeably with "accredited," and the term "approved" is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented "approval" has in fact been affirmatively required or authorized by State or Federal law. [Guide 1]

§ 254.2 Deceptive trade or business names.

(a) An industry member should not use any trade or business name, label, insignia, or designation which has the capacity and tendency or effect of misleading or deceiving prospective students, or student with respect to the nature of the school, its accreditation, programs of instruction or methods of teaching, or any other material fact.

(b) An industry member should not falsely represent directly or indirectly by the use of a trade or business name or in any other manner that:

(1) It is a part of or connected with a branch, bureau, or agency of the U.S. Government, or of any State, or civil service commission;

(2) It is an employment agency or that it is an employment agent or authorized training facility for another industry or member of such industry, or otherwise deceptively conceal the fact that it is a school.

(c) If an industry member conducts its instruction wholly by correspondence or home study, a clear and conspicuous disclosure should be made in immediate conjunction with its trade or business name that it is a correspondence or home study school. An industry member which offers both resident and correspondence or home study instruction should clearly and conspicuously identify in all advertisements and promotional materials, except in those pertaining solely to its resident program, the programs or courses to be offered in whole or in part by correspondence or home study. [Guide 2]

§ 254.3 Misrepresentation of extent or nature of accreditation or approval.

(a) An industry member should not misrepresent directly or indirectly the extent or nature of any approval its

school may have received from a State agency or the extent or nature of its accreditation by a nationally recognized accrediting agency, or association. Illustratively, an industry member should not:

(1) Unqualifiedly represent that its school is accredited unless all of its programs of instruction have in fact been accredited by an accrediting agency recognized by the U.S. Commissioner of Education of the U.S. Department of Health, Education, and Welfare. If an accredited school offers courses or programs of instruction which have not been accredited, all advertisements or promotional materials pertaining to such courses or programs should contain a clear and conspicuous disclosure that they are not accredited if any reference is made in the advertisements or promotional materials to the accreditation of the school.

(2) Represent that its school or a course is approved, unless the nature, extent, and purpose of that approval are disclosed.

(3) Represent that students successfully completing a course or program of instruction may transfer credit therefor to an accredited institution of higher education unless such is the fact.

(b) An industry member should not represent that a course of instruction has been approved by a particular industry, or that successful completion thereof qualifies the student for admission to a labor union or similar organization, or for the receipt of a State or Federal license to perform certain functions, unless such is the fact.

(c) An industry member should not represent that its courses are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members or officials of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements from former students or anyone else unless such is the fact. Testimonials or endorsements which do not accurately reflect current practices of the school, or current conditions or employment opportunities in the industry or occupation to which the

training pertains, should not be used. [Guide 3]

§ 254.4 Misrepresentation of facilities, services, qualifications of instructors, and status.

(a) An industry member should not misrepresent directly or indirectly in its advertising, promotional materials, or in any manner the size, location, facilities, or equipment of its school or the number or educational qualifications of its faculty and other personnel. Illustratively, an industry member should not:

(1) Use or refer to fictional organization divisions or position titles or make any representation which has the tendency or capacity to mislead or deceive students or prospective students, as to the size or importance of the school, its divisions, faculty, personnel, or officials, or in any other material respect.

(2) Misrepresent directly or indirectly the size, importance, location, facilities, or equipment of the school through use of photographs, illustrations, or any other depictions in catalogs, advertisements, or other promotional materials. For example, photographs or illustrations which purport to show school equipment should not be used if the school does not use such equipment in the conduct of its courses.

(3) Represent that the school owns, operates, or supervises a dormitory, eating, or other living accommodations unless such is the fact.

(4) Falsely or deceptively represent the location or locations at which its courses will be conducted.

(5) Misrepresent the nature, or efficacy, of its courses, training devices, methods or equipment or the number, qualifications, training, or experience of its faculty or personnel, whether by means of endorsements or otherwise.

(6) Falsely represent that it will provide or arrange for part or full-time employment while the student is undergoing instruction; or misrepresent in any manner, directly or by implication, the availability of such employment or any other form of financial assistance.

(7) Deceptively represent the nature of any relationship which the school or any of its officers, employees, or instructors may have with the U.S. Government or any of its agencies or any agency of a State or local government, or that by virtue of such a relationship or any prior relationship its students will receive preferred consideration in obtaining employment with such a government or any of its agencies.

(8) Represent directly or indirectly that certain individuals or classes of individuals are bona fide working members of its faculty, or are members of its advisory board, or have played an active part in the preparation of its instruction materials, unless such is the fact, or misrepresent in any manner, directly or by implication, the extent or nature of the association of any person with the school or the courses offered.

(9) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other attention it will provide for its students either during a course or after completion of a course.

(b) An industry member should not represent directly or indirectly that it is a nonprofit organization unless such is the fact.

(c) An industry member should not falsely represent that it is affiliated with or otherwise connected with a public or private religious or charitable organization.

(d) An industry member should not falsely or deceptively represent that a course has been recently revised, or that it has a revision system or service, or misrepresent in any manner, its facilities, procedures, or ability to keep a course current. [Guide 4]

§ 254.5 Misrepresentation of enrollment qualifications or limitations.

(a) An industry member should not misrepresent the nature or extent of any prerequisites it has established for enrollment in a course or program of instruction. For example, it should not:

(1) Represent that a course is available only to those having a high school diploma or other specific educational qualifications, unless the sale of

such a course is limited to persons possessing generally acceptable evidence of such a diploma or educational qualifications.

(2) Represent that only those who make an acceptable grade or complete successfully a certain test or examination will be admitted, if in fact enrollments are not thus limited.

(3) Falsely represent that it will accept for enrollment only a limited number of persons or a limited number of persons from a certain geographical area.

(4) Falsely represent that applications for enrollment will be considered for only a limited period of time, or that they must be submitted by a certain date.

(b) An industry member should not falsely represent that the lack of a high school education or prior training or experience is not a handicap or impediment to successful completion of a course.

(c) An industry member should endeavor to establish the qualifications which an applicant should have to assimilate successfully the subject matter of the course. Applicants should be informed of these prerequisites, and those who are not so qualified should not be enrolled. [Guide 5]

§ 254.6 Deceptive use of diplomas, degrees, or certificates.

(a) An industry member should not issue a degree, diploma, certificate of completion, or any document of similar import, which misrepresents directly or indirectly the subject matter, substance or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) An industry member should not offer or confer an academic, professional, or occupational degree, if the award of such degree has not been authorized by the appropriate State educational agency or approved by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses in all advertising and promotional materials which contain a reference to such degree that its award has

not been authorized or approved by such an agency.

(c) An industry member should not offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed by means of a clear and conspicuous disclosure in writing prior to his enrollment, that the industry member cannot guarantee or otherwise control the recognition which will be accorded the diploma by institutions of higher education, other schools or by prospective employers, and that the degree to which it is recognized is a matter solely within the discretion of those agencies. [Guide 6]

§ 254.7 Deceptive sales practices.

(a) In obtaining leads to prospective students, an industry member should not use advertisements or promotional material which is classified, designated or captioned, "Men wanted to train for * * *", "Help Wanted", "Employment", "Business Opportunities" or by words or terms of similar import, so as to represent directly or by implication that employment is being offered.

(b) An industry member should not deceptively designate or refer to its sales representatives as "registrars", "counselors", "advisors", or by words of similar import or misrepresent in any other manner, the titles, qualifications, training, experience or status of its salesmen, agents, employees, or other representatives.

(c) The advertising or promotional materials of an industry member which are used to provide leads to prospective students should include the full name and address of the school (a local address is permissible in the case of a multilocational school) and disclose the fact that it is a school if such is not apparent from its name. In addition, a person who responds to such an advertisement or promotional material should not be visited by a salesman unless the advertisement or material contains a clear and conspicuous disclosure that a salesman may call or unless consent to such a visit is first obtained by mail or telephone.

(d) In obtaining leads to prospective students, an industry member should not represent that it is conducting a talent hunt, contest, or similar test, unless such is the fact and such representation is accompanied by a clear and conspicuous disclosure of the industry member's name and address and the fact that it is a school if such is not apparent from its name. An industry member which conducts a talent hunt, contest, or similar test among prospective students should keep accurate records concerning the results thereof. [Guide 7]

§ 254.8 Deceptive pricing and misuse of the word "free."

(a) An industry member should not represent directly or indirectly in advertising or otherwise that a course or courses may be taken for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive students or prospective students with respect to the cost of a course or any equipment, books, or supplies associated therewith or furnish any means or instrumentality by which others engaged in obtaining enrollments may make such representations. Illustratively, an industry member should not represent:

(1) That veterans or other stated classes of persons may be enrolled at a reduced or special rate unless such is the fact;

(2) That a specific amount is its usual and customary price for a course unless such amount is the price at which the course has been usually and customarily sold in the recent regular course of business;

(3) That any saving is afforded in the price of a course from the member's regular price unless the price at which the course is offered constitutes a reduction from the price at which the course has been usually and customarily sold in the recent regular course of business;

(4) That books, training materials, or training aids are furnished at reduced rates,

(i) Unless the prices therefor have been reduced from the prices at which they were usually and customarily

sold by the member in the recent and regular course of business; or

(ii) Unless the prices therefor have been reduced from the prices at which they were usually and customarily sold at retail by principal outlets in the trade area.

(b) An industry member should not misrepresent the total cost of the course to a prospective student or falsely represent that it offers scholarships which pay for all or part of the course.

NOTE: The Commission's Guides Against Deceptive Pricing (Part 233 of this chapter) afford further guidance in this area.

(c) An industry member which represents that any course material, training device, or service is free should comply with the provisions of the Commission's Guide Concerning Use of the Word "Free" and Similar Representations (Part 251 of this chapter). [Guide 8]

§ 254.9 Deceptive or unfair collection and credit practices.

(a) An industry member should not use any deceptive representations or deceptive means to collect or attempt to collect tuition or other charges from its students. For example, an industry member should not represent that a delinquent account has been or will be referred to an independent collection agency or to an attorney unless such is the fact.

(b) An industry member should not seek to enforce or obtain a judgment or otherwise attempt to collect on any contract or other instrument between itself and a student, or transfer or assign such contract or other instrument to a third party for the purpose of collection or of enforcing or obtaining a judgment on said contract or instrument, if the member or its employees or representatives misrepresented the nature or the terms of said contract or instrument at the time or prior to the time the contract or instrument was signed.

NOTE: The Commission's Guides Against Debt Collection Deception (Part 237 of this chapter) afford further guidance in this area.

[Guide 9]

§ 254.10 Affirmative disclosure prior to enrollment.

Before obtaining the signature of a prospective student or of his parent or guardian on an enrollment contract or contract of sale, an industry member should furnish in writing to that person or persons the following information:

(a) The member's policy and regulations relative to make-up work, delay or delinquency in meeting course requirements, and standards required of the student for achieving satisfactory progress, including class attendance if applicable.

(b) If the member recommends, suggests, or requires that the student have or secure any additional texts, equipment, or materials other than usual student supplies such as paper and pencils, or utilize any supplementary services offered by the member, and the cost thereof is not included in the contract price of the course, an itemized list of such items and services showing the price thereof.

(c) In the case of courses to be taught in residence, a description of the school's physical facilities, and equipment to be used in teaching the class, and the usual class size.

(d) If the member represents that it offers a placement service to its graduates or will otherwise secure or assist them to find employment, a detailed and explicit description of the extent and nature of this service or assistance.

(e) Any other material facts concerning the school and the program of instruction or course which are reasonably likely to affect the decision of the student to enroll therein. [Guide 10]

PART 25^F—GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Sec.

- 255.0 Definitions.
- 255.1 General considerations.
- 255.2 Consumer endorsements.
- 255.3 Expert endorsements.
- 255.4 Endorsements by organizations.
- 255.5 Disclosure of material connections.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

§ 255.0 Definitions.

(a) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term "endorsements" is therefore generally used hereinafter to cover both terms and situations.

(b) For purposes of this part, an "endorsement" means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group or institution.

(c) For purposes of this part, the term "product" includes any product, service, company or industry.

(d) For purposes of this part, an "expert" is an individual, group or institution possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

Example 1: A film critic's review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement since it is viewed by readers as a statement of the critic's own opinions and not those of the film producer, distributor or exhibitor. Therefore, any alteration in or quotation from the text of the review which does not fairly reflect its substance would be a violation of the standards set by this part.

Example 2: A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family's clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

Example 3: In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a spokesman for the advertising drug company praises the drug's

ability to deliver fast and lasting pain relief. He purports to speak, not on the basis of his own opinions, but rather in the place of and on behalf of the drug company. Such an advertisement would not be an endorsement.

Example 4: A manufacturer of automobile tires hires a well known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Even though the message is not expressly declared to be the personal opinion of the driver, it may nevertheless constitute an endorsement of the tires. Many consumers will recognize this individual as being primarily a racing driver and not merely a spokesman or announcer for the advertiser. Accordingly, they may well believe the driver would not speak for an automotive product unless he/she actually believed in what he/she was saying and had personal knowledge sufficient to form that belief. Hence they would think that the advertising message reflects the driver's personal views as well as those of the sponsoring advertiser. This attribution of the underlying views to the driver brings the advertisement within the definition of an endorsement for purposes of this part.

Example 5: A television advertisement for golf balls shows a prominent and well-recognized professional golfer hitting the golf balls. This would be an endorsement by the golfer even though he makes no verbal statement in the advertisement.

[40 FR 22128, May 21, 1975, as amended at 45 FR 3872, Jan. 18, 1980]

§ 255.1 General considerations.

(a) Endorsements must always reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, they may not contain any representations which would be deceptive, or could not be substantiated if made directly by the advertiser. [See Example 2 to Guide 3 (§ 255.3) illustrating that a valid endorsement may constitute all or part of an advertiser's substantiation.]

(b) The endorsement message need not be phrased in the exact words of the endorser, unless the advertisement affirmatively so represents. However, the endorsement may neither be presented out of context nor reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only as long as it has good reason to believe

that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information on the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) In particular, where the advertisement represents that the endorser uses the endorsed product, then the endorser must have been a bona fide user of it at the time the endorsement was given. Additionally, the advertiser may continue to run the advertisement only so long as he has good reason to believe that the endorser remains a bona fide user of the product. [See § 255.1(b) regarding the "good reason to believe" requirement.]

Guide 1, Example 1: A building contractor states in an advertisement that he specifies the advertiser's exterior house paint because of its remarkable quick drying properties and its durability. This endorsement must comply with the pertinent requirements of Guide 3. Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to specify the paint and to subscribe to the views presented previously.

Example 2: A television advertisement portrays a woman seated at a desk on which rest five unmarked electric typewriters. An announcer says "We asked Mrs. X, an executive secretary for over ten years, to try these five unmarked typewriters and tell us which one she liked best."

The advertisement portrays the secretary typing on each machine, and then picking the advertiser's brand. The announcer asks her why, and Mrs. X gives her reasons. Assuming that consumers would perceive this presentation as a "blind" test, this endorsement would probably not represent that Mrs. X actually uses the advertiser's machines in her work. In addition, the endorsement may also be required to meet the standards of Guide 3 on Expert Endorsements.

[Guide 1]

[45 FR 3872, Jan. 18, 1980]

§ 255.2 Consumer endorsements.

(a) An advertisement employing an endorsement reflecting the experience of an individual or a group of consumers on a central or key attribute of the product or service will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, unless the advertiser possesses and relies upon adequate substantiation for this representation, the advertisement should either clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances or clearly and conspicuously disclose the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The Commission's position regarding the acceptance of disclaimers or disclosures is described in the preamble to these Guides published in the *FEDERAL REGISTER* on January 13, 1980.

(b) Advertisements presenting endorsements by what are represented, directly or by implication, to be "actual consumers" should utilize actual consumers, in both the audio and video or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

(c) Claims concerning the efficacy of any drug or device as defined in the Federal Trade Commission Act, 15 U.S.C. 55, shall not be made in lay endorsements unless (1) the advertiser has adequate scientific substantiation for such claims and (2) the claims are not inconsistent with any determination that has been made by the Food and Drug Administration with respect to the drug or device that is the subject of the claim.

Guide 2, Example 1: An advertisement presents the endorsement of an owner of one of the advertiser's television sets. The consumer states that she has needed to take the set to the shop for repairs only one time during her 2-year period of ownership and the costs of servicing the set to date have been under \$10.00. Unless the advertiser possesses and relied upon adequate substantiation for the implied claim that such performance reflects that which a significant

proportion of consumers would be likely to experience, the advertiser should include a disclosure that either states clearly and conspicuously what the generally expectable performance would be or clearly and conspicuously informs consumers that the performance experienced by the endorser is not what they should expect to experience. The mere disclosure that "not all consumers will get this result" is insufficient because it can imply that while all consumers cannot expect the advertised results, a substantial number can expect them. [See the cross reference in Guide 2(a) regarding the acceptability of disclaimers or disclosures.]

Example 2: An advertiser presents the results of a poll of consumers who have used the advertiser's cake mixes as well as their own recipes. The results purport to show that the majority believed that their families could not tell the difference between the advertised mix and their own cakes baked from scratch. Many of the consumers are actually pictured in the advertisement along with relevant, quoted portions of their statements endorsing the product. This use of the results of a poll or survey of consumers probably represents a promise to consumers that this is the typical result that ordinary consumers can expect from the advertiser's cake mix.

Example 3: An advertisement purports to portray a "hidden camera" situation in a crowded cafeteria at breakfast time. A spokesperson for the advertiser asks a series of actual patrons of the cafeteria for their spontaneous, honest opinions of the advertiser's recently introduced breakfast cereal. Even though the words "hidden camera" are not displayed on the screen, and even though none of the actual patrons is specifically identified during the advertisement, the net impression conveyed to consumers may well be that these are actual customers, and not actors. If actors have been employed, this fact should be disclosed.

[Guide 2]

[45 FR 3872, Jan. 18, 1980]

§ 255.3 Expert endorsements.

(a) Whenever an advertisement represents, directly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications must in fact give him the expertise that he is represented as possessing with respect to the endorsement.

(b) While the expert may, in endorsing a product, take into account factors not within his expertise (e.g., matters of taste or price), his endorsement must be supported by an actual exercise of his expertise in evaluating

product features or characteristics with respect to which he is expert and which are both relevant to an ordinary consumer's use of or experience with the product and also are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement. Where, and to the extent that, the advertisement implies that the endorsement was based upon a comparison such comparison must have been included in his evaluation; and as a result of such comparison, he must have concluded that, with respect to those features on which he is expert and which are relevant and available to an ordinary consumer, the endorsed product is at least equal overall to the competitors' products. Moreover, where the net impression created by the endorsement is that the advertised product is superior to other products with respect to any such feature or features, then the expert must in fact have found such superiority.

Example 1: An endorsement of a particular automobile by one described as an "engineer" implies that the endorser's professional training, and experience are such that he is well acquainted with the design and performance of automobiles. If the endorser's field is, for example, chemical engineering, the endorsement would be deceptive.

Example 2: A manufacturer of automobile parts advertises that its products are approved by the "American Institute of Science." From its very name, consumers would infer that the "American Institute of Science" is a bona fide independent testing organization with expertise in judging automobile parts and that, as such, it would not approve any automobile part without first testing its efficacy by means of valid scientific methods. Even if the American Institute of Science is such a bona fide expert testing organization, as consumers would expect, the endorsement may nevertheless be deceptive unless the Institute has conducted valid scientific tests of the advertised products and the test results support the endorsement message.

Example 3: A manufacturer of a non-prescription drug product represents that its product has been selected in preference to competing products by a large metropolitan hospital. The hospital has selected the product because the manufacturer, unlike its

competitors, has packaged each dose of the product separately. This package form is not generally available to the public. Under the circumstances, the endorsement would be deceptive because the basis for the choice of the manufacturer's product, convenience of packaging, is neither relevant nor available to consumers.

Example 4: The president of a commercial "home cleaning service" states in a television advertisement that the service uses a particular brand of cleanser in its business. Since the cleaning service's professional success depends largely upon the performance of the cleansers it uses, consumers would expect the service to be expert with respect to judging cleansing ability, and not be satisfied using an inferior cleanser in its business when it knows of a better one available to it. Accordingly, the cleaning service's endorsement must at least conform to those consumer expectations. The service must, of course, actually use the endorsed cleanser. Additionally, on the basis of its expertise, it must have determined that the cleansing ability of the endorsed cleanser is at least equal (or superior, if such is the net impression conveyed by the advertisement) to that of competing products with which the service has had experience and which remain reasonably available to it. Since in this example, the cleaning service's president makes no mention that the endorsed cleanser was "chosen," "selected," or otherwise evaluated in side-by-side comparisons against its competitors, it is sufficient if the service has relied solely upon its accumulated experience in evaluating cleansers without having to have performed side-by-side or scientific comparisons.

Example 5: An association of professional athletes states in an advertisement that it has "selected" a particular brand of beverages as its "official breakfast drink". As in Example 4, the association would be regarded as expert in the field of nutrition for purposes of this section, because consumers would expect it to rely upon the selection of nutritious foods as part of its business needs. Consequently, the association's endorsement must be based upon an expert evaluation of the nutritional value of the endorsed beverage. Furthermore, unlike Example 4, the use of the words "selected" and "official" in this endorsement imply that it was given only after direct comparisons had been performed among competing brands. Hence, the advertisement would be deceptive unless the association has in fact performed such comparisons between the endorsed brand and its leading competitors in terms of nutritional criteria, and the results of such comparisons conform to the net impression created by the advertisement.

[Guide 3]

[40 FR 22128, May 21, 1975]

§ 255.4 Endorsements by organizations.

Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors which vary from individual to individual. Therefore an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its expertise in evaluating the product under § 255.3 of this part (Expert endorsements), it must utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products.

Example: A mattress seller advertises that its product is endorsed by a chiropractic association. Since the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an expert evaluation by an expert or experts recognized as such by the organization, or by compliance with standards previously adopted by the organization and aimed at measuring the performance of mattresses in general and not designed with the particular attributes of the advertised mattress in mind. (See also § 255.3, Example 5.)

[Guide 4]

[40 FR 22128, May 21, 1975]

§ 255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product which might materially affect the weight or credibility of the endorsement (*i.e.*, the connection is not reasonably expected by the audience) such connection must be fully disclosed. An example of a connection that is ordinarily expected by viewers and need not be disclosed is the payment or promise of payment to an endorser who is an expert or well known personality, as long as the advertiser does not represent that the endorsement was given without compensation. However, when the endors-

er is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reasons to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser.

Example 1: A drug company commissions research on its product by a well-known research organization. The drug company pays a substantial share of the expenses of the research project, but the test design is under the control of the research organization. A subsequent advertisement by the drug company mentions the research results as the "findings" of the well-known research organization. The advertiser's payment of expenses to the research organization need not be disclosed in this advertisement. Application of the standards set by Guides 3 and 4 provides sufficient assurance that the advertiser's payment will not affect the weight or credibility of the endorsement.

Example 2: A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must of course comply with § 255.1; but even though the compensation paid the endorser is substantial, neither the fact nor the amount of compensation need be revealed.

Example 3: An actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. He is asked for his "spontaneous" opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its TV promotion of its new soy protein "steak". This notification would materially affect the weight or credibility of the patron's endorsement, and, therefore, viewers of the advertisement should be clearly and conspicuously informed of the circumstances under which the endorsement was obtained.

Assume, in the alternative, that the advertiser had not posted a sign on the door of the restaurant, but had informed all interviewed customers of the "hidden camera" only after interviews were completed and the customers had no reason to know or believe that their response was being recorded for use in an advertisement. Even if patrons were also told that they would be paid for

allowing the use of their opinions in advertising, these facts need not be disclosed.

[Guide 5]

[45 FR 3873, Jan. 18, 1980]

PART 256—GUIDES FOR THE LAW BOOK INDUSTRY

Sec.

- 256.0 Definitions.
- 256.1 General disclosures.
- 256.2 Disclosures relative to supplementation.
- 256.3 Disclosures relative to texts and treatises.
- 256.4 New revisions or replacement sets or series.
- 256.5 Representations, express or implied, describing a work as "new", "current" or "up-to-date".
- 256.6 Disclosures relative to misleading titles of texts and treatises.
- 256.7 Representations relative to works not yet published.
- 256.8 Representations relative to jurisdictional designations.
- 256.9 Catalogs.
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- 256.14 Upkeep service.
- 256.15 Billing practices.
- 256.16 Added materials—germane subject matter.
- 256.17 Misrepresentations (general).

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41-58).

SOURCE: 40 FR 33436, Aug. 8, 1975, unless otherwise noted.

§ 256.0 Definitions.

(a) **Industry product.** Any law book, case book, publication, series, service, law research materials, supplements and other printed materials of similar nature as well as materials appearing in microform, film, tape or other non-print format designed primarily for use by members of the law profession and by law schools, excluding second-hand or used law materials.

(b) **Treatise or text.** An exposition—critical, evaluative, interpretive or informative—which analyzes one or more areas of the law. Generally, a legal treatise is more exhaustive in scope than an encyclopedia, and is considered a secondary aid.

(c) *Set*. A group of books published as a unit by virtue of such unifying characteristics as common authorship, editorship, relevance, or subject.

(d) *Series*. A number of separate works or sets, usually related to one another in subject or otherwise, issued in succession, normally by the same publisher or in uniform style, with a collective title.

(e) *Looseleaf (binder)*. A law book or series of law books that consist of ring or post-bound (compression-type) binders used to hold separate looseleaf sheets as opposed to the bound book format wherein pages are permanently attached to the binder.

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

§ 256.1 General disclosures.

Direct-mail promotional materials¹ or oral representations soliciting the sale of specific industry products should clearly and conspicuously disclose:

(a) Name and address of publisher;

(b) Full title including any sub-titles, and edition name or number if not the first;

(c) Surname and given name or initials of authors, editors or compilers or designate if authored, edited or compiled by publisher's editorial staff;

(d) Latest copyright date and whether supplemented; or in the event of a looseleaf or post-bound (compression-type) publication, other appropriate identification of currency (latest copyright date not necessary for open-ended, ongoing type works such as reports and digests);

(e) In the case of a reprint by other than the original publisher, the publisher and copyright date of the original work, name and address of the reprint publisher and reprint dates;

¹Where the direct-mail advertising of specific industry products consists of a promotional package containing more than one advertising piece (e.g., a brochure and/or cover letter, order form, and/or reply card), the disclosures required by §§ 256.1-256.3, 256.5-256.8 and 256.17 must appear clearly and conspicuously in the place where they are most likely to be noticed, on at least one piece of the promotional advertising package.

(f) Whether part of a set or series and, if so, the full title of said set or series;

(g) Where the title of the advertised industry product is general, when in fact coverage therein is more limited than the title implies, a synoptic description of the limited coverage of subject matter, except in cases where chapter headings are listed and adequately reflect the limited subject matter;

(h) Type of binding (e.g., permanently bound with pocket parts, looseleaf including post-bound, compression-binder type or paperback);

(i) Where the price of the industry product appears, a description of what the price includes (e.g., the number of volumes in a set) and whether there are any extra charges such as postage, handling, shipping or other surcharges. [Guide 1]

§ 256.2 Disclosures relative to supplementation.

Direct mail promotional materials or oral representations soliciting the sale of specific industry products should, where an industry product is being supplemented, or supplementation is being contemplated, clearly and conspicuously disclose:

(a) The general type of supplementation currently being supplied, a description of what is included in that supplementation (e.g., pocket part supplements [bound, unbound or pamphlet type], replacement pages, cumulative supplements, revised volumes, split volumes, replacement volumes), and the anticipated frequency of supplementation (e.g., annually or monthly);

(b) Any charge for the latest pocket parts or supplements, and the clearly identified period of time within which supplementation will be supplied without additional charge;

(c) The specific nature of any offer of credit or discount for supplements in connection with the original purchase, and the clearly identified period of time for said offer;

(d) Whether supplementation to the industry product has been abandoned, or is knowingly to be abandoned within 1 year after issuance of the so-

licitation, and the date or approximate date for abandonment of supplementation;

(e) Minimum supplementation cost for each of the past 2 calendar years, or such shorter period in which the publication has been available. [Guide 2]

§ 256.3 Disclosures relative to texts and treatises.

Direct-mail promotional materials or oral representations soliciting the sale of specific texts and treatises should clearly and conspicuously disclose:

(a) For a multivolume set the number or estimated number of volumes which are anticipated to complete the set, and the estimated publication schedule;

(b) Where offer is of a set, a general description of subjects covered under said set title;

NOTE: Industry member should clearly indicate general scope of the work, e.g., set may be titled *Encyclopedia of Hawaiian Law*. If the work is not a full encyclopedic treatment of Hawaiian law, it should be disclosed that it covers only certain areas which are to be clearly identified.

[Guide 3]

§ 256.4 New revisions or replacement sets or series.

Where a publisher sells an industry product whose replacement or substantial revision is scheduled to be offered for sale within 1 year following the date of sale of the precursor work, such publisher should notify the purchaser, prior to consummating the sale, that the industry product will be replaced or revised and the approximate date of such replacement or revision. If the purchaser has not been so notified, the publisher should offer to the purchaser either:

(a) Full refund for the obsolete work within the 1 year period, less reasonable charges for the period of use of the work, or

(b) Full credit on the obsolete work within the 1 year period towards purchase of the new work, less reasonable charges for the period of use of the obsolete work.

NOTE: This section does not apply when the publisher continues full supplementation of the precursor set or series.

[Guide 4]

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

§ 256.5 Representations, express or implied, describing a work as "new", "current" or "up-to-date".

No direct-mail promotional materials or oral representations soliciting the sale of specific industry products should:

(a) Expressly or impliedly represent that the industry product is new when said industry product was first distributed more than 18 months prior to the time of the offer or dissemination of the advertisement (some examples, but not all inclusive, of terms suggesting new publications are: "Announcing", "newly revised", "New 8th Edition", "Up-to-date", "New");

(b) Represent an industry product as current or up-to-date unless the work itself, or the supplementation thereto, is current or up-to-date, considering the amount and nature of legal activity in the particular area of law covered on the date of issuance of the advertisement; but in no event should any representation be made that the industry product is current or up-to-date when either the copyright date, printing date or end of coverage date for supplementation of such industry product is more than 18 months from the date of issuance of the advertisement.

NOTE: Some areas of the law and thus some works may require monthly supplementation to be considered current while others may be kept sufficiently current by annual or, in exceptional cases, even less frequent supplementation. In some exceptional cases, for example, where legislatures only meet on a biannual basis, supplementation based thereon may be designated as current and up-to-date.

[Guide 5]

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

§ 256.6 Disclosures relative to misleading titles of texts and treatises.

Direct-mail promotional materials or oral representations soliciting the sale of specific texts or treatises should clearly and conspicuously disclose:

(a) Where a title contains the name of a person who did not author or edit

or only partially authored or edited the actual texts or treatises, the names of authors or editors who contributed substantial parts of an industry product. The names of such authors or editors should appear at least once in immediate conjunction with the title where it most prominently appears in the advertisement;

(b) Other or prior titles and last copyright date where the advertised industry product or substantially the same industry product is or was published separately and/or as part of a set or as part of two or more sets, under identical or different titles (e.g., "Smith on Mortgages" is also published as Volume 9 of "The Symposium on Real Property Law" (1980); or "Smith on Mortgages" is substantially the same book as " " or is based on " " or is composed of material also found in " " Volume 9 of "The Symposium on Real Property Law" (1980) [or words to that effect]);

(c) Other or prior titles and last copyright date where the industry product or substantially the same industry product is or was published elsewhere and/or in another format under identical or different titles (e.g., "Brown on Leases," Revised Edition, published under the title of "Landlord & Tenant" (1980); or "Brown on Leases," Revised Edition, is composed primarily of materials from Landlord & Tenant (1980) [or words to that effect]);

(d) The identity of any sources, by title and last copyright date or other identification of currency, where the material in the industry product is substantially extracted from such sources [e.g., Chapter 1 of this book is based on the author's article in "97 Harvard Law Review 283" (1980)];

(e) For 5 years after issuance of a revision or a new edition of another title, the original title and last copyright date or other identification of currency of the precursor industry product.

NOTE: Where an industry product is composed of innumerable, short excerpts from other sources, such as a lawyer's desk aid and lawyer's almanac, then disclosure that the work is such a compilation will suffice without identifying all sources of the material therein.

[Guide 6]

§ 256.7 Representations relative to works not yet published.

Representations soliciting the sale of specific industry products should not expressly or impliedly hold out a publication as having been printed or published at the time of the offer when such is not the fact. Solicitations relative to works not yet published should clearly and conspicuously disclose that the publication is being planned or contemplated and that inquiries or orders are being solicited to determine demand for the publication, or words to that effect. [Guide 7]

§ 256.8 Representations relative to jurisdictional designations.

Representations soliciting the sale of an industry product should not expressly or impliedly describe such product as being designed for a particular jurisdiction unless the contents of said industry product are designed primarily for and contain significant amounts of materials for use in the jurisdiction so designated. Nor should the promotional materials for an industry product have a designation or title that expresses or implies that a broader or more general jurisdiction is covered when in fact the industry product is designed primarily for a jurisdiction more limited in scope (e.g., "The New Rules of Evidence" is actually a work which applies to new evidence rules enacted in one State only). [Guide 8]

§ 256.9 Catalogs.

Catalog listings and descriptions of law publications should conform to §§ 256.1 to 256.3, 256.5 to 256.8, and § 256.17 of this part, and such catalogs should clearly and conspicuously disclose the printing or coverage dates on the front cover. [Guide 9]

§ 256.10 Subscription renewal notices.

(a) A subscription renewal notice for industry products should not be sent to any person, firm, library, or entity, where the recipient thereof is not currently subscribing to the industry product to which the renewal notice refers or relates.

(b) A subscription renewal notice should clearly designate the number of the notice (e.g., "First Renewal Notice" or "Second Renewal Notice"). [Guide 10]

§ 256.11 Disclosures on publications.

Texts or treatises, separately published or published in sets or series, should clearly and conspicuously disclose on the title page or pages, half title page and/or verso of title page:

(a) Full title of the book, including any sub-titles;

(b) If part of a set or series, the title of same;

(c) The number of the edition if not the first;

(d) For 5 years after issuance of a revision or a new edition of another title, the original title and last copyright date or other identification of currency of the precursor industry product;

(e) Unambiguous identification of authors, editors or compilers; or whether authored, edited or compiled by the publisher's editorial staff. However, if authors, editors or compilers are listed in the table of contents or credits, this paragraph need not apply;

(f) Name, city and State of publisher;

(g) Where the industry product or substantially the same industry product is or was published separately or as part of one or more sets under identical or different titles, or is or was published in various places or formats under identical or different titles, the prior titles and the place and date of previous publication. However, if such disclosures appear in the table of contents or credits, this paragraph need not apply;

(h) When the industry product is substantially extracted from other sources, the identity of sources by titles and copyright dates unless such disclosures appear in the table of contents or credits;

(i) Where the title contains the name of a person who did not author or edit, or only partially authored or edited the industry product, the names of authors, editors or publisher's editorial staff who contributed substantial parts of the industry product, and such disclosures should

appear on the title page in conspicuous type or print. [Guide 11]

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

§ 256.12 Jurisdictional designations of publications.

No industry product should be titled with a jurisdictional designation (e.g., "Maryland Edition"; or "Montana Real Estate Law") unless the contents of said industry product are designed primarily for and contain significant amounts of material for use in that jurisdiction. Nor should an industry product have a title which expresses or implies that a broader or more general jurisdiction is covered when in fact the industry product is designed primarily for a jurisdiction more limited in scope (e.g., "The New Rules of Evidence" is actually a work which applies to new evidence rules enacted in one State only). [Guide 12]

§ 256.13 Disclosures on supplements.

Supplements issued to industry products should clearly and conspicuously disclose:

(a) On title page or verso of pocket parts and of stapled or bound supplemental units and on cover page or pages or their versos for replacement or supplemental pages:

(1) Full title of the industry product; and where part of a set or series, title of said set or series;

(2) Surname and given name of authors, editors or compilers of the titled industry product or if prepared by the publisher's editorial staff;

(3) Surname and given name of authors, editors or compilers of supplement if different from that of the titled book;

(4) Coverage date or date of issuance for the supplement.

(b) On each replacement sheet, the month and year of issuance. [Guide 13]

§ 256.14 Upkeep service.²

Prior to the formation of any contract, or other agreement, whether

² Upkeep service is also sometimes referred to as "Standing Order", "Continuations", "Subscription", or "Subscription Upkeep".

Continued

written or oral, for the purchase of industry products containing provisions for subsequent automatic shipment of materials for upkeep purposes, the seller should:

(a) Clearly and conspicuously define the nature and extent of basic upkeep service. Basic upkeep service should include only those parts of upkeep which are absolutely essential and without which a set cannot remain functional (this might include such parts as pocket part supplements, replacement pages, releases and inserts, advance sheets, and replacement, revised, recompiled or split volumes); and

(b) Make available for purchase such basic upkeep service on an automatic shipment basis without requiring the purchase of other additional upkeep services whether on an automatic basis or otherwise.

NOTE 1: Nothing in this section is meant to preclude a seller from offering to buyers the option of ordering and receiving all parts of upkeep on an automatic basis, including basic supplementation and all other extra parts of supplementation, or any other method of upkeep such as alternate year supplementation, as long as other requirements of this section are met.

NOTE 2: The purpose of this section is to furnish the seller and buyer with a clear understanding of what is being ordered. There has been dissension and confusion in the lawbook industry as to what constitutes upkeep service and as to what the customer

expects to receive or thinks he ordered under the upkeep provision, and as to which parts or units of the upkeep service the customer considers necessary or unnecessary for his particular requirements.

NOTE 3: Where a customer chooses to purchase individual parts of the upkeep service on a non-automatic basis [see paragraph (b) of this section], the total price for each part so ordered should not exceed the cost of such parts when ordered automatically [see Note 1 of this section], unless any increased charges are based upon the actual increased costs to the seller directly attributable to such sale and/or delivery.

NOTE 4: The Federal Trade Commission Act will be enforced in accordance with Section 3009 of the Postal Reorganization Act which designates that "(a) * * * the mailing of unordered merchandise or of communications prohibited by paragraph (c) of this section constitutes an unfair method of competition and an unfair trade practice. . . ."

"(b) Any merchandise mailed in violation of paragraph (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

"(c) No mailer of any merchandise mailed in violation of paragraph (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications."

[Guide 14]

§ 256.15 Billing practices.

(a) Sellers of industry products should notify all customers in a clear and conspicuous manner:

(1) To mark conspicuously their account numbers (if any) or other appropriate identifying data on all correspondence and payments, including checks, sent by customers to the seller;

(2) That, upon request for clarification of an account, any customer may receive a statement of accounts, showing each purchase, payment or credit itemized for the current or all pertinent, preceding months;

(3) That, where the seller can apply payments to specific items under its

Once a customer invests in a work, his investment serves as a compelling factor in his decision of whether or not to continue future upkeep. Financial practicality and limited choices offered by sellers of particular types of works in a heavily concentrated industry tend to keep the buyer confined to the work in which he has already invested; therefore, the buyer will not or is reluctant to switch to a competitive work (if there is one) when he cannot purchase the type of upkeep he wants or needs.

Customers have varied needs and wants relating to upkeep. For example, the customer may want to enter his subscription or order for automatic upkeep of supplements (i.e., pocket part supplements, replacement pages, releases, inserts), advance sheets, replacement, revised, recompiled or split volumes, but he may want to be notified of and given the opportunity to order any additional, companion or related volumes, series or sets, new editions, or any related titles.

billing procedures, to indicate or identify to the seller or payee the item or items to which any payment is to be applied.

(b) The publisher or seller of industry products should:

(1) When receiving communications showing account numbers, have the responsibility of applying all correspondence and payments to the correct account, and where there is any question, notify the customer before entering the pertinent data into the computer system;

(2) Provide a statement of accounts when requested by the customer;

(3) Where seller can apply payments to specific items under its billing procedures, apply payments or credits as designated by the buyer or payor.

(c) The seller of industry products, in oral or written communications with the buyer, should not use fictitious names, but should use names of live persons who are actively participating in the business.

(d) Billing statements to purchasers of industry products should show:

(1) Date and customer's account number, if any;

(2) Invoice numbers or, where items are listed, a clear and readable description of each item or unit. If abbreviations are used which are not readily understandable, the statement should have thereon or attached thereto a clear interpretation of said abbreviations (e.g., a table);

(3) A price for each item, or invoice totals, or the total of invoice totals;

(4) Penalty, interest, or carrying charges, if any, clearly and separately identified;

(5) Purchases sent on approval, if any, clearly and separately identified.

(e) All industry product invoices should:

(1) Be dated, numbered or adequately identified, and should show customer's account number, if any;

(2) Show a clear and readable description of each item or unit. If abbreviations are used which are not readily understandable, the invoice should have thereon or attached thereto a clear interpretation of said abbreviations;

(3) Show a price for each item, and clearly state terms of sale and amount of discount, if any;

(4) Clearly show the time period for approval orders, by showing specific opening and termination dates.

NOTE: This section is meant to suggest some basic information that should be provided for the billing process although the seller may prefer to use some other system or method which furnishes essentially the same information as provided by this section. Further, this section does not relieve an industry member of his responsibilities to comply with the Fair Credit Billing Act, 15 U.S.C. 1601, and law book sellers should note with particularity section 161 of that Act dealing with "Correction of Billing Errors".

[Guide 15]

§ 256.16 Added materials—germane subject matter.

The adding of volumes or other materials, the overall content of which is not substantially germane to the subject matter of the basic work, constitutes an unfair trade practice. [Guide 16]

§ 256.17 Misrepresentations (general).

An industry product should not be advertised, published or otherwise represented in any manner which may have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the grade, quality, material, size, contents, authorship, editorship, use, value, price, origin, preparation, manufacture or date of publication or copyright of any industry product or of any supplementation thereto, or the current or up-to-date character thereof, or concerning any service offered in connection therewith, or in any other material respect. [Guide 17]

NOTE: If a fixed fee per period is charged for a current topic reporting upkeep service which is supplemented monthly or more frequently, §§ 256.2, 256.3, 256.13(a) and 256.14 do not apply.

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.

259.1 Definitions.

259.2 Advertising disclosures.

§ 259.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *"New automobile."* Any passenger automobile or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person, resident or located in the United States or any territory thereof engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *"Gas Mileage Guide."* The most recent publication of the U.S. Environmental Protection Agency (EPA) and/or the U.S. Department of Energy issued pursuant to section 506(b) of the Energy Policy and Conservation Act (15 U.S.C. 2006(b)).

(c) *"Estimated mpg"* and *"estimated city fuel economy."* The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR Part 86 (1977), and subsequent revisions; and expressed in miles-per-

gallon, to the nearest whole mile-per-gallon as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *"Estimated highway fuel economy."* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed by the U.S. Environmental Protection Agency as described in 40 CFR Part 600 (1977) and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, or accepted by the U.S. Environmental Protection Agency.

(e) *"Estimated combined fuel economy."* The harmonic average of the "estimated mpg" and the estimated highway fuel economy" weighted 0.55 and 0.45, respectively.

(f) *"Vehicle configuration."* The unique combination of automobile features, as defined in 40 CFR Part 600.

(38 Stat. 717, as amended (15 U.S.C. 41-58))
(43 FR 55749, Nov. 29, 1978)

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile¹ unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) The "estimated mpg" of such automobile, with the U.S. Environmental Protection Agency identified as the source of such figures; and

(2) That the "estimated mpg" is to be used for comparison purposes, and that the actual fuel economy to be obtained by the consumer may be different and will depend upon the individ-

¹The Commission will regard as an express or implied fuel economy representation one which an ordinary consumer, upon considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.

ual's driving speed, weather conditions, and trip length.²

(b) If an advertisement for a new automobile cites:

(1) The "estimated highway fuel economy" for the advertised vehicle, the advertisement must refer to that figure as the "estimated highway" mileage or "highway estimate," and must clearly and conspicuously disclose:

(i) The "estimated mpg" of the advertised vehicle, giving that figure substantially more prominence than the "estimated highway fuel economy" and placing the two figures in close conjunction with each other;³

²The Commission will regard the following disclosures as complying with § 259.2(a)(2):

For radio and television when the "estimated mpg" appears in the audio portion, the following audio disclosures will be sufficient: "Remember: Use this number for comparisons. The actual mileage you get may be different," or "Remember: Compare this estimate to the 'estimated mpg' of other cars. The actual mileage you get may be different."

For television, when the "estimated mpg" appears only in the video portion: "Remember: Use this estimate for comparisons. Your mileage may be different, depending on your speed, trip length, and weather."

For print media only (other than roadside billboards): "Remember: Compare this estimate to the 'estimated mpg' of other cars. You may get different mileage, depending on how fast you drive, weather conditions, and trip length."

For roadside billboards only: "Use for Comparisons. Get Free Gas Mileage Guide from dealer for details." or "Use for Comparisons. Actual mileage may be different."

³The Commission will regard the following as constituting "substantially more prominence":

For television only: If the "estimated mpg" and any other mileage estimate appear only in the visual portion, the "estimated mpg" must appear in numbers twice as large as those used for any other estimate, and must remain on the screen at least as long as any other estimate. If the "estimated mpg" appears in the audio portion, visual broadcast of the "estimated highway fuel economy" or the "estimated combined fuel economy" must be accompanied by the simultaneous, at least equally prominent, visual broadcast of the "estimated mpg." Each visual "estimated mpg" must be broadcast against a solid color background which contrasts easily with the color

(ii) That the "estimated mpg" is to be used for comparison purposes and that actual mileage may be different from the "estimated mpg," depending on the individual's driving speed, weather conditions, and trip length;

(iii) That actual highway mileage will probably be less than the "estimated highway fuel economy."

(2) The "estimated combined fuel economy" for the advertised vehicle, the advertisement must refer to that figure as the "estimated combined" mileage or the "combined estimate," and must clearly and conspicuously disclose:

(i) The "estimated mpg" of the advertised vehicle, giving that figure substantially more prominence than the "estimated combined fuel economy" and placing the two figures in close conjunction with each other;

(ii) That the "estimated mpg" is to be used for comparison purposes and that actual mileage may be different from the "estimated mpg," depending on the individual's driving speed, weather conditions, and trip length;

(iii) That the "estimated mpg" is more likely to reflect actual overall mileage than the "estimated combined fuel economy."

used for the numbers when viewed on both color and black-and-white televisions.

For radio and television when "estimated highway fuel economy" or "estimated combined fuel economy" are used in audio: The "estimated mpg" must be stated, both before and after each disclosure of the "estimated highway fuel economy" or the "estimated combined fuel economy" at least as audibly as each other estimate.

For print only: The "estimated mpg" must appear in clearly legible type at least twice as large as that used for the "estimated highway fuel economy" or the "estimated combined fuel economy." Alternatively, if the "estimated mpg" appears in type of the same size as the "highway" or "combined" estimate, it must be clearly legible and conspicuously circled. The "estimated mpg" must appear against a solid color, contrasting background. It may not appear in a footnote unless all references to fuel economy appear in a footnote. No reference to or citation of the "estimated highway fuel economy" or the "estimated combined fuel economy" may appear in the title of any advertisement.

(c) Fuel economy estimates derived from a non-EPA test may be disclosed provided that:

(1) The advertisement also discloses the "estimated mpg," includes the disclosures required by § 259.2(b)(1)(ii), and gives the "estimated mpg" substantially more prominence than any other estimate disclosed;

(2) The source of the non-EPA test is clearly and conspicuously identified;

(3) The driving conditions and variables simulated by the test which differ from those used to measure the "estimated mpg" are clearly and conspicuously disclosed. Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, and temperature; and

(4) The advertisement clearly and conspicuously discloses any distinctions in vehicle configuration and other equipment affecting mileage performance (e.g. radial tires) between the automobiles tested in the non-EPA and "estimated mpg" EPA tests.

(d) No manufacturer or dealer shall represent that the "estimated mpg" is the "estimated city fuel economy" unless:

(1) The designation as "estimated mpg" is accorded prominence at least equal to the designation as "estimated city fuel economy" or similar terms; and

(2) The designation as "estimated city fuel economy" or similar term is accompanied by the clear and conspicuous disclosure that fuel economy in heavy city traffic will be lower.

(e) All advertisement placed thirty days or later after publication of this Guide must comply with the foregoing provisions. All non-conforming ad copy which has been placed during the period, but which can be withdrawn and replaced with conforming advertisements without penalty, must be so withdrawn. For purposes of this section, ad copy can be withdrawn and replaced with conforming advertisements without penalty if applicable standard media deadlines or closing dates, as set by current rate cards, standard contracts or ordinary business practice, have not yet expired. In no case may a non-conforming ad appear five months after publication of this Guide.

(38 Stat. 717, as amended (15 U.S.C. 41-58))
[43 FR 55749, Nov. 29, 1978]

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

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SOURCE: 6 FR 3426, July 15, 1941, unless otherwise noted.

DEFINITIONS

§ 300.1 Terms defined.

(a) The term "Act" means the Wool Products Labeling Act of 1939 (approved October 14, 1940, Public No. 850, 76th Congress, Third Session, 54 Stat. 1128, 15 U.S.C. 68 *et seq.* as amended by Pub. L. 96-242, 94 Stat. 344).

(b) The terms "rule", "rules", "regulations" and "rules and regulations" mean the rules and regulations prescribed by the Commission pursuant to the Act.

(c) The term "ornamentation" means any fibers or yarns imparting a visibly discernible pattern or design to a yarn or fabric.

(d) The term "fiber trademark" means a word or words used by a person to identify a particular fiber produced or sold by him and to distinguish it from fibers of the same generic class produced or sold by others. Such term shall not include any trademark, product mark, house mark, trade name or other name which does not identify a particular fiber.

(e) The terms "required information" or "information required" mean such information as is required to be disclosed on the required stamp, tag, label or other means of identification under the Act and regulations.

(f) The definitions of terms contained in section 2 of the Act shall be applicable also to such terms when used in rules promulgated under the Act.

(g) The term *United States* means the several States, the District of Columbia, and the territories and possessions of the United States.

(h) The terms "mail order catalog" and "mail order promotional material" mean any printed materials used in the direct sale or direct offering for sale of wool products that are distributed or shown to ultimate consumers and solicit the ultimate consumers to purchase such wool products by mail, telephone or some other method without examining the actual product purchased.

(i) The terms label, labels, labeled, and labeling mean the stamp, tag, label, or other means of identification, or authorized substitute therefore, required to be on or affixed to wool products by the Act or Regulations and on which the information required is to appear.

[29 FR 6623, May 21, 1964, as amended at 45 FR 44261, July 1, 1980; 50 FR 15105, Apr. 17, 1985]

LABELING

§ 300.2 General requirement.

Each and every wool product subject to the act shall be marked by a stamp, tag, label, or other means of identification, in conformity with the requirements of the act and the rules and regulations thereunder.

§ 300.3 Required label information.

(a) The marking of wool products under the Act shall be in the form of a stamp, tag, label or other means of identification, showing and displaying upon the product the required information legibly, conspicuously, and nondeceptively. The information required to be shown and displayed upon the product in the stamp, tag, label, or other mark of identification, shall be that which is required by the Act and the rules and regulations thereunder, including the following:

(1) The fiber content of the product specified in section 4(a)(2)(A) of the Act. The generic names and percent-

ages by weight of the constituent fibers present in the wool product, exclusive of permissive ornamentation, shall appear on such label with any percentage of fiber or fibers designated as "other fiber" or "other fibers" as provided by section 4(a)(2)(A)(5) of the Act appearing last.

(2) The maximum percentage of the total weight of the wool product of any nonfibrous loading, filling or adulterating matter as prescribed by section 4(a)(2)(B) of the Act.

(3) The name or registered identification number issued by the Commission of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured.

(b) In disclosing the constituent fibers in information required by the Act and regulations or in any non-required information, no fiber present in the amount of less than five percentum shall be designated by its generic name or fiber trademark but shall be designated as "other fiber," except that the percentage of wool or recycled wool shall always be stated, in accordance with section 4(a)(2)(A) of the Act. Where more than one of such fibers, other than wool or recycled wool, are present in amounts of less than five per centum, they shall be designated in the aggregate as "other fibers." Provided, however, that nothing contained herein shall prevent the disclosure of any fiber present in the product which has a clearly established and definite functional significance where present in the amount stated and the functional significance of such fiber is clearly and non-deceptively stated on the label in conjunction with such disclosure.

[29 FR 6623, May 21, 1964, as amended at 45 FR 44261, July 1, 1980; 50 FR 15105, Apr. 17, 1985]

§ 300.4 Registered identification number.

(a) A registered identification number assigned by the Federal Trade Commission under and in accordance with the provisions of this section may

be used upon the stamp, tag, label, or other mark of identification required under the Act to be affixed to a wool product, as and for the name of the person to whom such number has been assigned.

(b) Any manufacturer of a wool product or person subject to section 3 of the Act with respect to such wool product, residing in the United States, may make application to the Federal Trade Commission for a registered identification number, or such numbers as the Commission may deem appropriate, for use by the applicant on the required stamp, tag, label, or other mark of identification under the Act, as and for his name with fully as binding effect.

(c) Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable. Registered identification numbers shall be subject to cancellation whenever any such number was

procured or has been used improperly or contrary to the requirement of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest.

(d) Registered identification numbers assigned under this section may be used on labels required in labeling products subject to the provisions of the Fur Products Labeling Act and Textile Fiber Products Identification Act, and numbers previously assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

(e) Form of application for registered identification numbers (Form to be used by all applicants):

APPLICATION FOR A REGISTERED IDENTIFICATION NUMBER

Approved by: ONIB
DMM 8-0001B
Expires 11/1/84

1. LEGAL NAME OF APPLICANT FIRM

2. NAME UNDER WHICH APPLICANT DOES BUSINESS, IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY

☐ PROPRIETORSHIP☐ PARTNERSHIP☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (include Zip Code)

5. TYPE OF BUSINESS (Put an 'X' in all the boxes that apply)

☐ MANUFACTURING☐ IMPORTING☐ WHOLESALE☐ OTHER (Please specify)

6. LIST PRODUCTS

7. CERTIFICATION

The products listed in item six (6) above are subject to one or more of the following Acts: The Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k), The Wool Products Labeling Act (15 U.S.C. §§ 68-68j), or the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). By filing this form with the Federal Trade Commission the company named above applies for a registered identification number to use on labels required by these Acts.

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PARTNER, OR CORPORATE OFFICIAL

8. NAME (Please print or type)

9. TITLE

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, The Wool Products Labeling Act, or the Fur Products Labeling Act provide that any marketer or manufacturer of fibrous or fur products covered by those Acts may apply for a registered identification number. Companies can then use the registered identification number, instead of the name under which the Company does business, on the labels, tags, tickets, or stamps that those Acts require to be attached to covered products.

In completing this application, please observe the following:

- (a) All blanks must be filled in. Include your Zip Code in Item 4.
(b) In Item 7 if the applicant firm is a partnership, a principal partner should sign. If a corporation, one of its principal officers should sign, giving his/her title in Item 9.

(c) Send one completed copy to:

Federal Trade Commission
Los Angeles Regional Office
11000 Wilshire Blvd., Suite 13209
Los Angeles, CA 90024

A registered identification number (RN) issued by the Commission continues in effect until revoked. The holder of the assigned number must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the holder's principal office and place of business must also be promptly reported.

[29 FR 6623, May 21, 1964, as amended at 48 FR 12516, Mar. 25, 1983]

§ 300.5 Required label and method of affixing.

(a) A label is required to be affixed to each wool product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

(b) Each wool product with a neck must have the label affixed to the inside center of the neck midway between the shoulder seams *provided*, however, that the required label may appear in close proximity to another label affixed to the inside center of the neck as long as the required label remains conspicuous to the consumer and, *provided further*, that if the country of origin is disclosed on a label affixed to the inside center of the neck or in close proximity, the label containing the country of origin, fiber content and RN or name of the company may appear in another conspicuous location on the inside or on the outside of the garment. All other wool products shall have the label affixed to a conspicuous spot on the inner side of the product or in a conspicuous place on the outside of the product.

(c) In the case of hosiery products, this section does not require affixing a label to each hosiery product contained in a package if, (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a label bearing the required information for the hosiery products contained in the package, and (3) the information on the label affixed to the package is equally applicable to each wool product contained therein.

[50 FR 15105, Apr. 17, 1985]

§ 300.6 Labels to be avoided.

Stamps, tags, labels, or other marks of identification, which are insecurely attached, or which in the course of offering the product for sale, selling, reselling, transporting, marketing, or handling incident thereto are likely to become detached, indistinct, obliterated,

ed, illegible, mutilated, inaccessible, or inconspicuous, shall not be used.

§ 300.7 English language requirement.

All words, statements and other information required by or under authority of the Act and the rules and regulations thereunder to appear on the stamp, tag, label, or other mark of identification, shall appear in the English language. If the product bears any stamp, tag, label, or mark of identification which contains any of the required information in a language other than English, all of the required information shall appear both in such other language and in the English language.

§ 300.8 Use of fiber trademark and generic names.

(a) Except where another name is required or permitted under the Act or regulations, the respective common generic name of the fiber shall be used when naming fibers in the required information; as for example, "wool," "recycled wool," "cotton," "rayon," "silk," "linen," "acetate," "nylon," "polyester."

(b) The generic names of manufactured fibers as heretofore or hereafter established in § 303.7 of this part (Rule 7) of the regulations promulgated under the Textile Fiber Products Identification Act (72 Stat. 1717; 15 U.S.C. 70) shall be used in setting forth the required fiber content information as to wool products.

(c) A non-deceptive fiber trademark may be used on a label in conjunction with the generic name of the fiber to which it relates. Where such a trademark is placed on a label in conjunction with the required information, the generic name of the fiber must appear in immediate conjunction therewith, and such trademark and generic name must appear in type or lettering of equal size and conspicuousness.

(d) Where a generic name or a fiber trademark is used on any label, whether required or nonrequired, a full and complete fiber content disclosure with percentages shall be made on such label in accordance with the Act and regulations.

(e) If a fiber trademark is not used in the required information, but is used elsewhere on the label as non-required information, the generic name of the fiber shall accompany the fiber trademark in legible and conspicuous type or lettering the first time the trademark is used.

(f) No fiber trademark or generic name or word, coined word, symbol or depiction which connotes or implies any fiber trademark or generic name shall be used on any label or elsewhere on the product in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate directly or indirectly that a wool product is composed wholly or in part of a particular fiber, when such is not the case.

(g) The term "fur fiber" may be used to describe the hair or fur fiber or mixtures thereof of any animal or animals other than the sheep, lamb, Angora goat, Cashmere goat, camel, alpaca, llama and vicuna. If the name, symbol, or depiction of any animal producing the hair or fur fiber is used on the stamp, tag, label, or other means of identification applied or affixed to the wool product, the percentage by weight of such hair or fur fiber in the total fiber weight of the wool product shall be separately stated in the required fiber content disclosure: *Provided*, That no such name, symbol or depiction shall be used where such hair or fur fiber is present in the amount of less than five per centum of the total fiber weight. No such name, symbol or depiction shall be used in such a way as to imply in any manner that a wool product contains the fur or hair of an animal when the hair or fur fiber of such animal is not present in the product in the amount of five per centum or more of the total fiber weight. The following are examples of fiber content disclosures under this paragraph:

60% Wool
40% Fur Fiber
or
60% Wool
30% Fur Fiber
10% Angora Rabbit

[29 FR 6624, May 21, 1964, as amended at 45 FR 44261, July 1, 1980]

§ 300.9 Abbreviations, ditto marks, and asterisks.

(a) In disclosing required information, words or terms shall not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and shall not be abbreviated.

(b) Where the generic name of a textile fiber is required to appear in immediate conjunction with a fiber trademark, a disclosure of the generic name by means of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the fiber trademark, shall not be sufficient in itself to constitute compliance with the Act and regulations.

[29 FR 6624, May 21, 1964]

§ 300.10 Arrangement of label information.

(a) All items or parts of the information required to be shown and displayed in the label of the product, shall be set forth consecutively and separately on the outer surface of the label, in immediate conjunction with each other, and in type or lettering plainly legible and conspicuous, and all parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness; such as for example:

Distributed by:
John Q. Doe Co., Inc.,
New York, N.Y.

Made of
60% WOOL
40% RECYCLED WOOL
EXCLUSIVE OF ORNAMENTATION

Made in U.S.A.

Provided, however, that the required name or registered identification number may appear on the reverse side of the label if it is plainly legible, conspicuous and accessible. On products as to which sectional disclosure is used, an additional non-deceptive label may be used showing the complete fiber content information with percentages as to a particular section or area of the product and specifying the section or area referred to.

(b) Subject to the provisions of § 300.8 of this part (Rule 8), if non-required information or representations

are placed on the label or elsewhere on the product, such nonrequired information or representations shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information, nor shall such nonrequired information in any way be false, deceptive or misleading.

[29 FR 6624, May 21, 1964, as amended at 45 FR 44261, July 1, 1980; 50 FR 15105, Apr. 17, 1985]

§ 300.11 Improper methods of labeling.

The stamp, tag, label, or other mark of identification required under the act, or the required information contained therein, shall not be minimized, rendered obscure or inconspicuous, or be so placed as likely to be unnoticed or unseen by purchasers and purchaser-consumers when the product is offered or displayed for sale or sold to purchasers or the consuming public, by reason of, among others:

- (a) Small or indistinct type.
- (b) Failure to use letters and numerals of equal size and conspicuousness in naming all fibers and percentages of such fibers as required by the act.
- (c) Insufficient background contrast.
- (d) Crowding, intermingling, or obscuring with designs, vignettes, or other written, printed or graphic matter.

§ 300.12 Labeling of pairs or products containing two or more units.

(a) Where a wool product consists of two or more parts, units, or items of different fiber content, a separate label containing the required information shall be affixed to each of such parts, units, or items showing the required information as to such part, unit, or item, provided that where such parts, units, or items, are marketed or handled as a single product or ensemble and are sold and delivered to the ultimate consumer as a single product or ensemble, the required information may be set out on a single label in such a manner as to separately show the fiber composition of each part, unit, or item.

(b) Where garments, wearing apparel, or other wool products are marketed or handled in pairs or ensembles of

the same fiber content, only one unit of the pair or ensemble need be labeled with the required information when sold and delivered to the ultimate consumer.

(c) Where parts or units of wool products of the types referred to in paragraphs (a) and (b) of this section are sold separately, such parts or units shall be labeled with the information required by the Act and regulations.

[29 FR 6624, May 21, 1964]

§ 300.13 Name or other identification required to appear on labels.

(a) The name required by the Act to be used on labels shall be the name under which the manufacturer of the wool product or other person subject to section 3 of the Act with respect to such product is doing business. Trade names, trade marks or other names which do not constitute the name under which such person is doing business shall not be used for required identification purposes.

(b) Registered identification numbers, as provided for in § 300.4 of this part (Rule 4), may be used for identification purposes in lieu of the required name.

[29 FR 6625, May 21, 1964]

§ 300.14 Substitute label requirement.

When necessary to avoid deception, the name of any person other than the manufacturer of the product appearing on the stamp, tag, label, or other mark of identification affixed to such product shall be accompanied by appropriate words showing that the product was not manufactured by such person; as for example:

Manufactured for: _____
Distributed by: _____
_____ Distributors

§ 300.15 Labeling of containers or packaging of wool products.

When wool products are marketed and delivered in a package which is intended to remain unbroken and intact until after delivery to the ultimate consumer, each wool product in the package, except hosiery, and the package shall be labeled with the required information. If the package is trans-

parent to the extent it allows for a clear reading of the required information on the wool product, the package is not required to be labeled.

[50 FR 15106, Apr. 17, 1985]

§ 300.16 Ornamentation.

(a) Where the wool product contains fiber ornamentation not exceeding 5 percent of the total fiber weight of the product and the stated percentages of fiber content of the product are exclusive of such ornamentation, the stamp, tag, label, or other means of identification shall contain a phrase or statement showing such fact; as for example:

50% Wool
25% Recycled Wool
25% Cotton
Exclusive of Ornamentation

The fiber content of such ornamentation may be disclosed where the percentage of the ornamentation in relation to the total fiber weight of the principal fiber or blend of fibers is shown; as for example:

70% Recycled Wool
30% Acetate
Exclusive of 4% Metallic Ornamentation

(b) Where the fiber ornamentation exceeds five per centum it shall be included in the statement of required percentages of fiber content.

(c) Where the ornamentation constitutes a distinct section of the product, sectional disclosure may be made in accordance with § 300.23 of this part (Rule 23).

[29 FR 6625, May 21, 1964, as amended; at 45 FR 44261, July 1, 1980]

§ 300.17 Use of the term "all" or "100%."

Where the fabric or product to which the stamp, tag, label, or mark of identification applies is composed wholly of one kind of fiber, either the word "all" or the term "100%" may be used with the correct fiber name; as for example "100% Wool," "All Wool," "100% Recycled Wool," "All Recycled Wool." If any such product is composed wholly of one fiber with the exception of fiber ornamentation not exceeding 5%, such term "all" or "100%" as qualifying the name of the fiber

may be used, provided it is immediately followed by the phrase "exclusive of ornamentation," or by a phrase of like meaning; such as, for example:

All Wool—Exclusive of Ornamentation

or

100% Wool—Exclusive of Ornamentation.

[45 FR 44261, July 1, 1980]

§ 300.18 Use of name of specialty fiber.

(a) In setting forth the required fiber content of a product containing any of the specialty fibers named in Section 2(b) of the Act, the name of the specialty fiber present may be used in lieu of the word "wool," provided the percentage of each named specialty fiber is given, and provided further that the name of the specialty fiber so used is qualified by the word "recycled" when the fiber referred to is "recycled wool" as defined in the Act. The following are examples of fiber content designation permitted under this rule:

55% Alpaca—45% Camel Hair
50% Recycled Camel Hair—50% Wool
60% Recycled Alpaca—40% Rayon
35% Recycled Llama—35% Recycled Vicuna—30% Cotton
60% Cotton—40% Recycled Llama.

(b) Where an election is made to use the name of a specialty fiber in lieu of the word "wool" in describing such specialty fiber, such name shall be used at any time reference is made to the specialty fiber either in required or nonrequired information. The name of the specialty fiber or any word, coined word, symbol or depiction connoting or implying the presence of such specialty fiber shall not be used in nonrequired information on the required label or on any secondary or auxiliary label attached to the wool product if the name of such specialty fiber does not appear in the required fiber content disclosure.

[29 FR 6625, May 21, 1964, as amended at 45 FR 44262, July 1, 1980]

§ 300.19 Use of terms "mohair" and "cashmere."

(a) In setting forth the required fiber content of a product containing hair of the Angora goat known as mohair or containing hair or fleece of

the Cashmere goat known as cashmere, the term "mohair" or "cashmere," respectively, may be used for such fiber in lieu of the word "wool," provided the respective percentage of each such fiber designated as "mohair" or "cashmere" is given, and provided further that such term "mohair" or "cashmere" where used is qualified by the word "recycled" when the fiber referred to is "recycled wool" as defined in the Act. The following are examples of fiber content designations permitted under this rule:

50% Mohair—50% Wool
60% Recycled Mohair—40% Cashmere
60% Cotton—40% Recycled Cashmere.

(b) Where an election is made to use the term "mohair" or "cashmere" in lieu of the term "wool" as permitted by this section, the appropriate designation of "mohair" or "cashmere" shall be used at any time reference is made to such fiber in either required or nonrequired information. The term "mohair" or "cashmere" or any words, coined words, symbols or depictions connoting or implying the presence of such fibers shall not be used in nonrequired information on the required label or on any secondary or auxiliary label attached to the wool product if the term "mohair" or "cashmere" as the case may be does not appear in the required fiber content disclosure.

[29 FR 6625, May 21, 1964, as amended at 45 FR 44262, July 1, 1980]

§ 300.20 Use of the terms "virgin" or "new."

The terms "virgin" or "new" as descriptive of a wool product, or any fiber or part thereof, shall not be used when the product or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, braided, bonded, or otherwise manufactured or used product.

[29 FR 6625, May 21, 1964]

§ 300.21 Use of separate label for name or registered identification number.

The name or registered identification number of the manufacturer or person subject to section 3 of the Act with respect to the wool product may be set forth on a label or mark sepa-

rate from that which contains the statement of fiber and material content of the product provided that the label or mark bearing said name or registered identification number and the name or registered identification number itself are prominently and conspicuously displayed either in immediate conjunction with, or in close proximity to, such other label or mark and in such manner as will inform purchasers and purchaser's representatives of the required information.

[29 FR 6625, May 21, 1964]

§ 300.22 Marking of samples, swatches and specimens.

Where samples, swatches or specimens of wool products subject to the act were used to promote or effect sales of such wool products in commerce, said samples, swatches and specimens, as well as the products themselves, shall be labeled or marked to show their respective fiber contents and other information required by law.

§ 300.23 Sectional disclosure of content.

(a) *Permissive.* Where a wool product is composed of two or more sections which are of different fiber composition, the required information as to fiber content may be separated on the same label in such manner as to show the fiber composition of each section.

(b) *Mandatory.* The disclosure as above provided shall be made in all instances where such form of marking is necessary to avoid deception.

[29 FR 6626, May 21, 1964]

§ 300.24 Linings, paddings, stiffening, trimmings and facings.

(a) In labeling or marking garments or articles of apparel which are wool products, the fiber content of any linings, paddings, stiffening, trimmings or facings of such garments or articles of apparel shall be given and shall be set forth separately and distinctly in the stamp, tag, label, or other mark of identification of the products.

(1) If such linings, trimmings or facings contain, purport to contain or are

represented as containing wool, or recycled wool; or

(2) If such linings are metallically coated, or coated or laminated with any substance for warmth, or if such linings are composed of pile fabrics, or any fabrics incorporated for warmth or represented directly or by implication as being incorporated for warmth, which articles the Commission finds constitute a class of articles which is customarily accompanied by express or implied representations of fiber content; or

(3) If any express or implied representations of fiber content of any of such linings, paddings, stiffening, trimmings or facings are customarily made.

(b) In the case of garments which contain interlinings, the fiber content of such interlinings shall be set forth separately and distinctly as part of the required information on the stamp, tag, label, or other mark of identification of such garment. For purposes of this paragraph (b) the term "interlining" means any fabric or fibers incorporated into a garment or article of wearing apparel as a layer between an outershell and an inner lining.

(c) In the case of wool products which are not garments or articles of apparel, but which contain linings, paddings, stiffening, trimmings, or facings, the stamp, tag, label, or other mark of identification of the product shall show the fiber content of such linings, paddings, stiffening, trimmings or facings, set forth separately and distinctly in such stamp, tag, label, or other mark of identification.

(d) Wool products which are or have been manufactured for sale or sold for use as linings, interlinings, paddings, stiffening, trimmings or facings, but not contained in a garment, article of apparel, or other product, shall be labeled or marked with the required information as in the case of other wool products.

[29 FR 6626, May 21, 1964, as amended at 45 FR 44262, July 1, 1980]

§ 300.25 Representations as to fiber content.

(a) Words, coined words, symbols, or depictions which constitute or imply the name or designation of a fiber

which is not present in the product shall not appear on labels. Any word or coined word which is phonetically similar to the name or designation of a fiber or which is only a slight variation in spelling from the name or designation of a fiber shall not be used in such a manner as to represent or imply that such fiber is present in the product when the fiber is not present as represented.

(b) Where a word, coined word, symbol or depiction which connotes or implies the presence of a fiber is used on any label, whether required or non-required, a full and complete fiber content disclosure with percentages shall be made on such label in accordance with the Act and regulations.

[29 FR 6626, May 21, 1964, as amended at 50 FR 15106, Apr. 17, 1985]

§ 300.25a Country where wool products are processed or manufactured.

(a) In addition to the other information required by the Act and Regulations:

(1) Each imported wool product shall be labeled with the name of the country where such imported product was processed or manufactured;

(2) Each wool product completely made in the United States of materials that were made in the United States shall be labeled using the term "Made in U.S.A." or some other clear and equivalent term.

(3) Each wool product made in the United States, either in whole or part, of imported materials shall contain a label disclosing these facts; for example:

"Made in USA of imported fabric"

or

"Knitted in USA of imported yarn" and

(4) Each wool product partially manufactured in a foreign country and partially manufactured in the United States shall contain on the label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

"Imported cloth, finished in USA",

or

"Sewn in USA of imported components"

or

"Made in (foreign country), finished in USA"

(ii) When the U.S. Customs Service requires an origin label on the unfinished product, the manufacturing processes as required in paragraph (a)(4)(i) of this section or the name of the foreign country required by Customs, for example:

"Made in (foreign country)"

(b) For the purpose of determining whether a product should be marked under paragraphs (a) (2), (3), or (4) of this section, a manufacturer needs to consider the origin of only those materials that are covered under the Act and that are one step removed from that manufacturing process. For example, a yarn manufacturer must identify fiber if it is imported, a cloth manufacturer must identify imported yarn and a household product manufacturer must identify imported cloth or imported yarn for household products made directly from yarn, or imported fiber used as filling for warmth.

(c) The term country means the political entity known as a nation. Except for the United States, colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries, and the name thereof shall be deemed acceptable in designating the country where the wool product was processed or manufactured unless the Commission shall otherwise direct.

(d) The country where the imported wool product was principally made shall be considered to be the country where such wool product was processed or manufactured. Further work or material added to the wool product in another country must effect a basic change in form in order to render such other country the place where such wool product was processed or manufactured.

(e) The English name of the country where the imported wool product was processed or manufactured shall be used. The adjectival form of the name of the country will be accepted as the name of the country where the wool product was processed or manufactured, provided the adjectival form of

the name does not appear with such other words so as to refer to a kind of species of product. Variant spellings which clearly indicate the English name of the country, such as *Brasil* for Brazil and *Italie* for Italy, are acceptable. Abbreviations which unambiguously indicate the name of a country, such as *Gl. Britain* for *Great Britain*, are acceptable.

(f) Nothing in this Rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

[50 FR 15106, Apr. 17, 1985]

§ 300.25b Country of origin in mail order advertising.

When a wool product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised.

[50 FR 15106, Apr. 17, 1985]

§ 300.26 Pile fabrics and products composed thereof.

The fiber content of pile fabrics or products made thereof may be stated in the label or mark of identification in such segregated form as will show the fiber content of the face or pile and of the back or base, with the percentages of the respective fibers as they exist in the face or pile and in the back or base: *Provided*, That in such disclosure the respective percentages of the face and the back be given in such manner as will show the ratio between the face and the back. Examples of the form of marking pile fabrics as to fiber content provided for in this section are as follows:

100% Wool Pile
100% Cotton Back
(Back constitutes 60% of fabric and pile 40%)

Pile—60% Recycled Wool, 40% Wool
 Back—70% Cotton, 30% Rayon
 (Pile constitutes 60% of fabric and
 back 40%).

[6 FR 3426, July 15, 1941, as amended at 45
 FR 44262, July 1, 1980]

§ 300.27 Wool products containing superimposed or added fibers.

Where a wool product is made wholly of one fiber or a blend of fibers with the exception of an additional fiber in minor proportion superimposed or added in certain separate and distinct areas or sections for reinforcing or other useful purposes, the product may be designated according to the fiber content of the principal fiber or blend of fibers, with an excepting naming the superimposed or added fiber, giving the percentage thereof in relation to the total fiber weight of the principal fiber or blend of fibers, and indicating the area or section which contains the superimposed or added fiber. An example of this type of fiber content disclosure, as applied to products having reinforcing fibers added to a particular area or section, is as follows:

55% Recycled Wool
 45% Rayon
 Except 5% Nylon added to toe and heel

[29 FR 6626, May 21, 1964, as amended at 45
 FR 44262, July 1, 1980]

§ 300.28 Undetermined quantities of reclaimed fibers.

(a) Where a wool product is composed in part of various man-made fibers recovered from textile products containing undetermined quantities of such fibers, the percentage content of the respective fibers recovered from such products may be disclosed on the required stamp, tag, or label, in aggregate form as "man-made fibers" followed by the naming of such fibers in the order of their predominance by weight, as for example:

60% Wool
 40% Man-made fibers
 Rayon
 Acetate
 Nylon

(b) Where a wool product is composed in part of wool, or recycled wool and in part of unknown and, for prac-

tical purposes, undeterminable non-woolen fibers reclaimed from any spun, woven, knitted, felted, braided, bonded or otherwise manufactured or used product, the required fiber content disclosure may, when truthfully applicable, in lieu of the fiber content disclosure otherwise required by the Act and regulations, set forth (1) the percentages of wool or recycled wool, and (2) the generic names and the percentages of all other fibers whose presence is known or practically ascertainable and (3) the percentage of the unknown and undeterminable reclaimed fibers, designating such reclaimed fibers as "unknown reclaimed fibers" or "undetermined reclaimed fibers," as for example:

75% Recycled Wool—25% Unknown Reclaimed Fibers.
 35% recycled Wool—30% Acetate—15% Cotton—20% Undetermined Reclaimed Fibers.

In making the required fiber content disclosure any fibers referred to as "unknown reclaimed fibers" or "undetermined reclaimed fibers" shall be listed last.

(c) The terms "unknown recycled fibers" and "undetermined recycled fibers" may be used in describing the unknown and undeterminable reclaimed fibers referred to in paragraph (b) of this rule in lieu of the terms specified therein, provided, however, That the same standard is used in determining the applicability of the term "recycled" as is used in defining "recycled wool" in section 2(c) of the Act.

(d) For purposes of this rule undetermined or unascertained amounts of wool or recycled wool may be classified and designated as recycled wool.

(e) Nothing contained in this rule shall excuse a full and accurate disclosure of fiber content with correct percentages if the same is known or practically ascertainable, or permit a deviation from the requirements of section 4(a)(2)(A) of the Act with respect to products not labeled under the provisions of this rule or permit a higher classification of wool or recycled wool than that provided by Section 2 of the Act.

[29 FR 6626, May 21, 1964, as amended at 45 FR 44262, July 1, 1980; 45 FR 49542, July 25, 1980]

§ 300.29 Garments or products composed of or containing miscellaneous cloth scraps.

(a) For wool products which consist of, or are made from, miscellaneous cloth scraps comprising manufacturing by-products and containing various fibers of undetermined percentages, the following form of disclosure as to fiber content of such wool products, where truthfully applicable and with appropriate percentage figure inserted, may be used in the stamp, tag, label, or mark of identification of such product:

(1) Where the product contains chiefly cotton as well as woolen fibers in the minimum percentage designated for recycled wool:

Made of Miscellaneous Cloth Scraps Composed Chiefly of Cotton With Minimum of —-% Recycled Wool.

(2) Where the product contains chiefly rayon as well as woolen fibers in the minimum percentage designated for recycled wool:

Made of Miscellaneous Cloth Scraps Composed Chiefly of Rayon With Minimum of —-% Recycled Wool.

(3) Where the product is composed chiefly of a mixture of cotton and rayon as well as woolen fibers in the minimum percentage designated for recycled wool:

Made of Miscellaneous Cloth Scraps Composed Chiefly of Cotton and Rayon With Minimum of —-% Recycled Wool.

(4) Where the product contains chiefly woolen fibers with the balance of undetermined mixtures of cotton, rayon or other non-woolen fibers:

Made of Miscellaneous Cloth Scraps Containing Cotton, Rayon and Other Non-Woolen Fibers, With Minimum of —-% Recycled Wool.

(b) Where the cotton or rayon content or the non-woolen fiber content mentioned in such forms of disclosure is not known to comprise as much as 50% of the fiber content of the product, the word "chiefly" in the respective form of disclosure specified in this section shall be omitted.

(c) The words "Contents are" may be used in the above-mentioned forms of marking in lieu of the words "Made of" where appropriate to the nature of the product.

(d) For purposes of this rule, undetermined or unascertained amounts of wool or recycled wool which may be contained in the product may be classified and designated as recycled wool.

[6 FR 3426, July 15, 1941, as amended at 45 FR 44262, July 1, 1980]

§ 300.30 Deceptive labeling in general.

Products subject to the act shall not bear, nor have used in connection therewith, any stamp, tag, label, mark or representation which is false, misleading or deceptive in any respect.

MANUFACTURERS' RECORDS

§ 300.31 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a wool product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain written records showing the fiber content as required by the Act of all such wool products made by such manufacturer. The records so maintained shall show:

(1) The percentage by weight of wool, recycled wool, and of each fiber other than wool, placed in the respective wool products of such manufacturer in the form of fiber, yarn, fabric or other form;

(2) The date, source and quantity of all raw material purchases;

(3) The date and quantity of each batch, blend, lot, stock, kettle, dye, weaving specifications, or cutting record as applicable to all raw material used, relating each to the purchase records of such raw material by appropriate lot or stock numbers, letters, or symbols; and

(4) The date and quantity of each sale or delivery of wool products manufactured, relating each sale or delivery to the manufacturing or processing record required in paragraph (a)(3) of this section by appropriate lot or stock numbers, letters, or symbols and such numbers, information, marks, or other means of identification as will

identify the said records with the respective wool products to which they relate and the said wool products with the respective records.

Manufacturers shall also keep and maintain as records under the Act all purchase and sales invoices, purchase and sales contracts, labels, manufacturing contracts, orders or duplicate copies thereof, business correspondence, factory records, inventories, and other pertinent documents and data showing or tending to show the purchase, receipt, use, and disposition of or accounting for all raw stocks, fiber, yarn, fabric or other manufactured materials obtained by the manufacturer.

(b) The purpose of such records shall be to establish a line of continuity from each purchase or acquisition of raw material through all processes of manufacture to the sale or delivery of all finished or semifinished wool products and to establish a line of continuity from such finished or semifinished wool products and the sale or delivery of the same through all processes of manufacture to the purchase or acquisition of the raw materials.

(c) The records required to be maintained pursuant to this section and section 6 of the Act shall be maintained and preserved for at least three years.

[29 FR 6627, May 21, 1964; 29 FR 8263, July 1, 1964, as amended at 45 FR 44262, July 1, 1980]

GUARANTIES

§ 300.32 Form of separate guaranty.

(a) The following are suggested forms of separate guaranties under section 9 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other paper relating to the marketing or handling of any wool products listed and designated therein

and showing the date of such invoice or other paper and the signature and address of the guarantor:

(1) General form.

We guarantee that the wool products specified herein are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder.

(2) Guaranty based on guaranty.

Based upon a guaranty received, we guarantee that the wool products specified herein are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder.

NOTE: The printed name and address on the invoice or other paper will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of wool products on a label or on an invoice or other paper relating to its marketing or handling shall not be considered a form of separate guaranty.

[29 FR 6627, May 21, 1964]

§ 300.33 Continuing guaranty filed with Federal Trade Commission.

(a)(1) Under section 9 of the Act any person residing in the United States and marketing or handling wool products may file a continuing guaranty with the Federal Trade Commission.

(2) When filed with the Commission a continuing guaranty shall be fully executed in duplicate. Forms for use in preparing continuing guaranties will be supplied by the Commission upon request.

(3) Continuing guaranties filed with the Commission shall continue in effect until revoked. The guarantor shall promptly report any change in business status to the Commission.

(b) Prescribed form of continuing guaranty:

CONTINUING GUARANTY

Approved by OMB
3084-0030
Expires 11-1-84

1. LEGAL NAME OF GUARANTOR FIRM

2. NAME UNDER WHICH GUARANTOR FIRM DOES BUSINESS IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY

☐ PROPRIETORSHIP☐ PARTNERSHIP☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (include Zip Code)

5. LAW UNDER WHICH THE CONTINUING GUARANTY IS TO BE FILED (Put an X in the appropriate boxes)

- ☐ Under the Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k). The company named above, which manufactures, markets, or handles textile fiber products, guarantees that when it ships or delivers any textile fiber product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Textile Fiber Products Identification Act and the rules and regulations under that Act.
- ☐ Under the Wool Products Labeling Act (15 U.S.C. §§ 65-65h). The company named above, which manufactures, markets, or handles wool products, guarantees that when it ships or delivers any wool product, the product will not be misbranded within the meaning of the Wool Products Labeling Act and the rules and regulations under that Act.
- ☐ Under the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). The company named above, which manufactures, markets, or handles fur products, guarantees that when it ships or delivers any fur product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Fur Products Labeling Act and the rules and regulations under that Act.

6. CERTIFICATION

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PRINCIPAL PARTNER, OR CORPORATE OFFICIAL

7. NAME (Please print or type)

8. TITLE

9. CITY AND STATE WHERE SIGNED

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any marketer or manufacturer of fibrous or fur products or furs covered by those Acts may file a continuing guaranty with the Federal Trade Commission. A continuing guaranty on file assures customer firms that the guarantor's products are in conformance with the Acts under which the guarantor has filed. Customer firms rely on the continuing guaranties for protection from liability if violations occur.

In completing this form, please observe the following:

- (a) Fill appropriate blanks on the form should be filled in. Include your Zip Code in Item 4.
- (b) In Item 6, if the guarantor firm is a partnership, a principal partner should sign. If a corporation, one of its principal officers should sign, giving his/her title in Item 8.

(c) Send two completed copies to:

Federal Trade Commission
Los Angeles Regional Office
11000 Wilshire Blvd., Suite 13209
Los Angeles, CA 90024

Continuing guaranties filed with the Commission continue in effect until revoked. The guarantor must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the guarantor's principal office or place of business must also be promptly reported.

DO NOT USE THIS SPACE

Filed _____ 19 ____

FEDERAL TRADE COMMISSION

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product guaranteed the following:

Continuing Guaranty under the Wool Products Labeling Act filed with the Federal Trade Commission:

(d) Any person who falsely represents that he has a continuing guaranty on file with the Federal Trade Commission shall be deemed to have furnished a false guaranty under section 9(b) of the Act.

[29 FR 6627, May 21, 1964, as amended at 48 FR 12517, Mar. 25, 1983]

§ 300.34 Reference to existing guaranty on labels not permitted.

No representation or suggestion that a wool product is guaranteed under the act by the Government, or any branch thereof shall be made on or in the stamp, tag, label, or other mark of identification, applied or affixed to wool products.

GENERAL

§ 300.35 Hearings under section 4(d) of the act.

Hearings under section 4(d) of the act will be held when deemed by the Commission to be in the public interest. Interested persons may file applications for such hearings. Such applications shall be filed in quadruplicate and shall contain a detailed technical description of the class or classes of articles or products regarding which applicant requests a determination and announcement by the Commission concerning express or implied representations of fiber content of articles or concerning insignificant or inconsequential textile content of products.

(Sec. 4(d), 54 Stat. 1129; 15 U.S.C. 68b(d))

PART 301—RULES AND REGULATIONS UNDER FUR PRODUCTS LABELING ACT

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301.0 Fur products name guide.

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- 301.2 General requirements.
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- 301.44 Misrepresentation of prices.
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AUTHORITY: 15 U.S.C. 69 *et seq.*, unless otherwise noted.

NAME GUIDE

§ 301.0 Fur products name guide.

NAME GUIDE

Name	Order	Family	Genus-species
Alpaca.....	Ungulata.....	Camelidae.....	Lama pacos.
Antelope.....	do.....	Bovidae.....	Hippotragus niger and Antelope cervicapra.
Badger.....	Carnivora.....	Mustelidae.....	Taxidea sp. and Meles sp.
Bassarisk.....	do.....	Procyonidae.....	Bassariscus astutus.
Bear.....	do.....	Ursidae.....	Ursus sp.
Bear, Polar.....	do.....	do.....	Thalartos sp.
Beaver.....	Rodentia.....	Castoridae.....	Castor canadensis.
Burunduk.....	do.....	Sciuridae.....	Eutamias asiaticus.
Calf.....	Ungulata.....	Bovidae.....	Bos taurus.
Cat, Caracal.....	Carnivora.....	Felidae.....	Caracal caracal.
Cat, Domestic.....	do.....	do.....	Felis catus.
Cat, Lynx.....	do.....	do.....	Lynx rufus.
Cat, Manul.....	do.....	do.....	Felis manul.
Cat, Margay.....	do.....	do.....	Felis wiedii.
Cat, Spotted.....	do.....	do.....	Felis sp. (South America).
Cat, Wild.....	do.....	do.....	Felis catus and Felis lybica.
Chowah.....	do.....	do.....	Acinonyx jubatus.
Chinchilla.....	Rodentia.....	Chinchillidae.....	Chinchilla chinchilla.
Chipmunk.....	do.....	Sciuridae.....	Eutamias sp.
Civet.....	Carnivora.....	Viverridae.....	Viverra sp., Viverricula sp., Paradoxurus sp., Paguma sp., and Herpestes sp.
Desman.....	Insectivora.....	Talpidae.....	Desmana moschata and Galemys pyrenaicus.
Dog.....	Carnivora.....	Canidae.....	Canis familiaris.
Ermine.....	do.....	Mustelidae.....	Mustela erminea.
Fisher.....	do.....	do.....	Martes pennanti.
Fitch.....	do.....	do.....	Mustela putorius.
Fox.....	do.....	Canidae.....	Vulpes fulva, Vulpes, vulpes, and Vulpes macrotis.
Fox, Blue.....	do.....	do.....	Alopex sp.
Fox, Grey.....	do.....	do.....	Urocyon cinereoargenteus and Urocyon littoralis.
Fox, Kit.....	do.....	do.....	Vulpes velox.
Fox, White.....	Carnivora.....	Canidae.....	Alopex sp.
Genet.....	do.....	Viverridae.....	Genetta genetta.
Goat.....	Ungulata.....	Bovidae.....	Capra prisca.
Guanaco, or its young, the Guanaquito.....	do.....	Camelidae.....	Lama guanicoe.
Hamster.....	Rodentia.....	Cricetidae.....	Cricetus cricetus.
Hare.....	do.....	Leporidae.....	Lepus sp. and Lepus europaeus occidentalis.
Jackal.....	Carnivora.....	Canidae.....	Canis aureus and Canis adustus.
Jackal, Cape.....	do.....	do.....	Canis mesomelas.
Jaguar.....	do.....	Felidae.....	Felis onca.
Jaguarondi.....	do.....	do.....	Felis yagouaroundi.
Kangaroo.....	Marsupialia.....	Macropodidae.....	Macropus sp.
Kangaroo-rat.....	do.....	do.....	Bettongia sp.
Kid.....	Ungulata.....	Bovidae.....	Capra prisca.

NAME GUIDE—Continued

Name	Order	Family	Genus-species
Kinkajou	Carnivora	Procyonidae	<i>Potos flavus</i> .
Koala	Marsupialia	Phascolarctidae	<i>Phascolarctos cinereus</i> .
Kolinsky	Carnivora	Mustelidae	<i>Mustela sibirica</i> .
Lamb	Ungulata	Bovidae	<i>Ovis aries</i> .
Leopard	Carnivora	Felidae	<i>Felis pardus</i> .
Llama	Ungulata	Camelidae	<i>Lama lama</i> .
Lynx	Carnivora	Felidae	<i>Lynx canadensis</i> and <i>Lynx lynx</i> .
Marmot	Rodentia	Sciuridae	<i>Marmota bobak</i> .
Marten, American	Carnivora	Mustelidae	<i>Martes americana</i> and <i>Martes caurina</i> .
Marten, Baum	do	do	<i>Martes martes</i> .
Marten, Japanese	do	do	<i>Martes melampus</i> .
Marten, Stone	do	do	<i>Martes foina</i> .
Mink	do	do	<i>Mustela vison</i> and <i>Mustela lutreola</i> .
Mole	Insectivora	Talpidae	<i>Talpa sp.</i>
Monkey	Primates	Colobidae	<i>Colobus polykomos</i> .
Muskrat	Rodentia	Muridae	<i>Ondatra zibethica</i> s.
Nutria	do	Capromyidae	<i>Myocastor coypus</i> .
Ocelot	Carnivora	Felidae	<i>Felis pardalis</i> .
Opossum	Marsupialia	Didelphidae	<i>Didelphis sp.</i>
Opossum, Australian	do	Phalangendae	<i>Trichosurus vulpecula</i> .
Opossum, Ring-tail	do	do	<i>Pseudocheirus sp.</i>
Opossum, South American	do	Didelphidae	<i>Lutreolina crassicaudata</i> .
Opossum, Water	do	do	<i>Chironectes minimus</i> .
Otter	Carnivora	Mustelidae	<i>Lutra canadensis</i> , <i>Pteronura brasiliensis</i> , <i>Lutra annectens</i> and <i>Lutra lutra</i> .
Otter, Sea	do	do	<i>Enhydra lutris</i> .
Pahm	do	do	<i>Helictis moschata</i> and <i>Helictis personata</i> .
Panda	do	Procyonidae	<i>Ailurus fulgens</i> .
Peschanik	Rodentia	Sciuridae	<i>Citellus fulvus</i> .
Pony	Ungulata	Equidae	<i>Equus caballus</i> .
Rabbit	Rodentia	Leporidae	<i>Oryctolagus cuniculus</i> .
Raccoon	Carnivora	Procyonidae	<i>Procyon lotor</i> and <i>Procyon cancrivorus</i> .
Raccoon, Asiatic	do	Canidae	<i>Nyctereutes procyonoides</i> .
Raccoon, Mexican	do	do	<i>Nasua sp.</i>
Reindeer	Ungulata	Cervidae	<i>Rangifer tarandus</i> .
Sable	Carnivora	Mustelidae	<i>Martes zibellina</i> .
Sable, American	do	do	<i>Martes americana</i> and <i>Martes caurina</i> .
Seal, Fur	Pinnipedia	Otariidae	<i>Callorhinus ursinus</i> and <i>Arctocephalus sp.</i>
Seal, Hair	do	Phocidae	<i>Phoca sp.</i>
Seal, Roc	do	Otariidae	<i>Otaria flavescens</i> .
Sheep	Ungulata	Bovidae	<i>Ovis aries</i> .
Skunk	Carnivora	Mustelidae	<i>Mephitis mephitis</i> , <i>Mephitis macroura</i> , <i>Conepatus semistriatus</i> and <i>Conepatus sp.</i>
Skunk, Spotted	do	do	<i>Spilogale sp.</i>
Squirrel	Rodentia	Sciuridae	<i>Sciurus vulgaris</i> .
Squirrel, Flying	do	do	<i>Eupetaurus cinereus</i> , <i>Pteromys volans</i> and <i>Petaurista leucogenys</i> .
Suslik	do	do	<i>Citellus citellus</i> , <i>Citellus rufescens</i> and <i>Citellus suslica</i> .
Vicuna	Ungulata	Camelidae	<i>Vicugna vicugna</i> .
Viscacha	Rodentia	Chinchillidae	<i>Ligidium viscacia</i> .
Wallaby	Marsupialia	Macropodidae	<i>Wallabia sp.</i> , <i>Petrogale sp.</i> , and <i>Thylogale sp.</i>
Weasel	Carnivora	Mustelidae	<i>Mustela frenata</i> .
Weasel, Chinese	do	do	<i>Mustela sibirica</i> .
Weasel, Japanese	do	do	<i>Mustela flatsi</i> (also classified as <i>Mustela sibirica flatsi</i>).
Weasel, Manchurian	Carnivora	Mustelidae	<i>Mustela n. usca</i> and <i>Mustela rixosa</i> .
Wolf	do	Canidae	<i>Canis lupus</i> and <i>Canis niger</i> .
Wolverine	do	Mustelidae	<i>Gulo luscus</i> and <i>Gulo gulo</i> .
Wombat	Marsupialia	Vombatidae	<i>Vombatus sp.</i>
Woodchuck	Rodentia	Sciuridae	<i>Marmota monax</i> .

(Secs. 7, 8, 65 Stat. 179; 15 U.S.C. 69e, 69f)

[17 FR 1205, Feb. 3, 1952, as amended at 26 FR 10446, Nov. 4, 1961; 32 FR 6023, Apr. 15, 1967]

REGULATIONS

SOURCE: 17 FR 6075, July 8, 1952, unless otherwise noted.

§ 301.1 Terms defined.

(a) As used in this part, unless the context otherwise specifically requires:

(1) The term "act" means the "Fur Products Labeling Act" (approved Aug. 8, 1951, Pub. L. 110, 82d Cong., 1st Sess.; 15 U.S.C.A. sec. 69; 65 Stat. 179).

(2) The terms "rule", "rules", "regulations," and "rules and regulations", mean the rule; and regulations prescribed by the Commission pursuant to section 8 (b) of the act.

(3) The definitions of terms contained in section 2 of the act shall be applicable also to such terms when used in rules promulgated under the act.

(4) The terms "Fur Products Name Guide" and "Name Guide" mean the register of names of hair fleece and fur bearing animals issued by the Commission on February 8, 1952, pursuant to the provisions of section 7 (a) of the act.

(5) The terms "required information" and "information required" mean the information required to be disclosed on labels, invoices and in advertising under the act and rules and regulations, and such further information as may be permitted by the regulations, when and if used.

(b) The term "wearing apparel" as used in the definition of a fur product in section 2(d) of the Act means (1) Any articles of clothing or covering for any part of the body; and (2) shall include any assembled furs, used furs, or waste furs, in attached form, including mats, plates or garment shells or furs flat off the board, and furs which have been dyed, tip-dyed, bleached or artificially colored, intended for use as or in wearing apparel: *Provided, however*, That the provisions of section 4(2) of the Act shall not be applicable to those fur products set out in paragraph (b)(2) of this section.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961]

§ 301.2 General requirements.

(a) Each and every fur product, except those exempted under § 301.39 of this part, shall be labeled and invoiced in conformity with the requirements of the act and rules and regulations.

(b) Each and every fur shall be invoiced in conformity with the requirements of the act and rules and regulations.

(c) Any advertising of fur products or furs shall be in conformity with the requirements of the act and rules and regulations.

§ 301.3 English language requirements.

All information required under the act and rules and regulations to appear on labels, invoices, and in advertising, shall be set out in the English language. If labels, invoices or advertising matter contain any of the required information in a language other than English, all of the required information shall appear also in the English language. The provisions of this section shall not apply to advertisements in foreign language newspapers or periodicals, but such advertising shall in all other respects comply with the act and regulations.

§ 301.4 Abbreviations or ditto marks prohibited.

In disclosing required information in labeling and advertising, words or terms shall not be abbreviated or designated by the use of ditto marks but shall be spelled out fully, and in invoicing the required information shall not be abbreviated but shall be spelled out fully.

§ 301.5 Use of Fur Products Name Guide.

(a) The Fur Products Name Guide (§ 301.0 of this part) is set up in four columns under the headings of Name, Order, Family and Genus-Species. The applicable animal name appearing in the column headed "Name" shall be used in the required information in labeling, invoicing and advertising of fur products and furs. The scientific names appearing under the columns headed Order, Family, and Genus-Species are furnished for animal identification purposes and shall not be used.

(b) Where the name of the animal appearing in the Name Guide consists of two separate words the second word shall precede the first in designating the name of the animal in the required information; as for example: "Fox, Black" shall be disclosed as "Black Fox."

§ 301.6 Animals not listed in Fur Products Name Guide.

(a) All furs are subject to the act and regulations regardless of whether the name of the animal producing the fur appears in the Fur Products Name Guide.

(b) Where fur is obtained from an animal not listed in the Fur Products Name Guide it shall be designated in the required information by the true English name of the animal or in the absence of a true English name, by the name which properly identifies such animal in the United States.

§ 301.7 Describing furs by certain breed names prohibited.

If the fur of an animal is described in any manner by its breed, species, strain or coloring, irrespective of former usage such descriptive matter shall not contain the name of another animal either in the adjective form or otherwise nor shall such description (subject to any exception contained in this part or animal names appearing in the Fur Products Name Guide) contain a name in an adjective form or otherwise which connotes a false geographic origin of the animal. For example, such designations as "Sable Mink," "Chinchilla Rabbit," and "Aleutian Mink" shall not be used.

§ 301.8 Use of terms "Persian Lamb," "Broadtail Lamb," and "Persian-broadtail Lamb" permitted.

(a) The term "Persian Lamb" may be used to describe the skin of the young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having hair formed in knuckled curls.

(b) The term "Broadtail Lamb" may be used to describe the skin of the prematurely born, stillborn, or very young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having flat light-weight fur with a moire pattern.

(c) The term "Persian-broadtail Lamb" may be used to describe the skin of the very young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having hair formed in flattened knuckled curls with a moire pattern.

(d) The terms "Persian Lamb", "Broadtail Lamb", or "Persian-broadtail Lamb" shall not be used to describe: (1) The so-called Krimmer, Bes-sarabian, Rumanian, Shiraz, Salz-felle, Metis, Dubar, Meshed, Caracul, Irani-an, Iraqi, Chinese, Mongolian, Che-kiang, or Indian lamb skins, unless such lamb skins conform with the requirements set out in paragraph (a), (b), or (c) of this section respectively; or (2) any other lamb skins having hair in a wavy or open curl pattern.

§ 301.9 Use of terms "Mouton Lamb" and "Shearling Lamb" permitted.

(a) The term "Mouton Lamb" may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellant finish; as for example:

Dyed Mouton Lamb

(b) The term "Shearling Lamb" may be used to describe the skin of a lamb which has been sheared and combed.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961]

§ 301.10 Use of term "Broadtail-processed Lamb" permitted.

The term "Broadtail-processed Lamb" may be used to describe the skin of a lamb which has been sheared, leaving a moire hair pattern on the pelt having the appearance of the true fur pattern of "Broadtail Lamb"; as for example:

Dyed Broadtail-processed Lamb
Fur origin: Argentina

§ 301.11 Fictitious or non-existing animal designations prohibited.

No trade names, coined names, nor other names or words descriptive of a fur as being the fur of an animal which is in fact fictitious or non-existent shall be used in labeling, invoicing or advertising of a fur or fur product.

§ 301.12 Country of origin of imported furs.

(a)(1) In the case of furs imported into the United States from a foreign country, the country of origin of such furs shall be set forth as a part of the information required by the act in invoicing and advertising.

(2) In the case of fur products imported into the United States from a foreign country, or fur products made from furs imported into the United States from a foreign country, the country of origin of the furs contained in such products shall be set forth as a part of the information required by the act in labeling, invoicing and advertising.

(b) The term "country" means the political entity known as a nation. Colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries and the name thereof shall be deemed acceptable in designating the "country of origin" unless the Commission shall otherwise direct.

(c) The country in which the animal producing the fur was raised, or if in a federal state, was taken, shall be considered the "country of origin."

(d) When furs are taken within the territorial waters of a country, such country shall be considered the "country of origin." Furs taken outside such territorial waters, or on the high seas, shall have as their country of origin the country having the nearest mainland.

(e)(1) The English name of the country of origin shall be used. Abbreviations which unmistakably indicate the name of a country, such as "S.W. Africa" for "Southwest Africa," and "Gt. Britain" for "Great Britain" are acceptable. Abbreviations such as "U.S.S.R." for the "Union of Soviet Socialist Republics" or "Russia" or "N.Z." for "New Zealand" are not acceptable.

(2) The name of the country of origin, when used as a part of the required information in labeling shall be preceded by the term "fur origin"; as for example:

Dyed Muskrat
Fur Origin: Russia
or
Dyed China Mink

Fur Origin: China

(3) In addition to the required disclosure of country of origin the name of the country may also appear in adjective form in connection with the name of the animal; as for example:

Tip-dyed Canadian American Sable
Fur Origin: Canada
or
Russian Sable
Fur Origin: Russia

(f) Nothing in this section shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961]

§ 301.13 Fur products having furs with different countries of origin.

When a fur product is composed of furs with different countries of origin the names of such countries shall be set forth in the required information in the order of predominance by surface areas of the furs in the fur product.

§ 301.14 Country of origin of used furs.

When the country of origin of used furs is unknown, and no representations are made directly or by implication with respect thereto, this fact shall be set out as a part of the required information in lieu of the country of origin as "Fur origin: Unknown."

§ 301.15 Designation of section producing domestic furs permitted.

In the case of furs produced in the United States the name of the section or area producing the furs used in the fur product may be set out in connection with the name of the animal; as for example:

Dyed Fur Seal
Fur origin: Alaska
or
Dyed Muskrat
Fur origin: Minnesota

§ 301.16 Disclosure of origin of certain furs raised or taken in United States.

If the name of any animal set out in the Fur Products Name Guide or term permitted by the regulations to be used in connection therewith connotes foreign origin and such animal is raised or taken in the United States, furs obtained therefrom shall be described in disclosing the required information as having the United States as the country of origin; as for example:

Dyed Persian Lamb
Fur origin: United States
or
Mexican Raccoon
Fur origin: United States

§ 301.17 Misrepresentation of origin of furs.

No misleading nor deceptive statements as to the geographical or zoological origin of the animal producing a fur shall be used directly or indirectly in labeling, invoicing or advertising furs or fur products.

§ 301.18 Passing off domestic furs as imported furs prohibited.

No domestic furs nor fur products shall be labeled, invoiced or advertised in such a manner as to represent directly or by implication that they have been imported.

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

(a) Where a fur or fur product is pointed or contains or is composed of bleached, dyed or otherwise artificially colored fur, such facts shall be disclosed as a part of the required information in labeling, invoicing and advertising.

(b) The term "pointing" means the process of inserting separate hairs into furs or fur products for the purpose of adding guard hairs, either to repair damaged areas or to simulate other furs.

(c) The term "bleaching" means the process for producing a lighter shade of a fur, or removing off-color spots and stains by a bleaching agent.

(d) The term "dyeing" (which includes the processes known in the trade of tipping the hair or fur, feathering, and beautifying) means the

process of applying dyestuffs to the hair or fur, either by immersion in a dye bath or by application of the dye by brush, feather, spray, or otherwise, for the purpose of changing the color of the fur or hair, or to accentuate its natural color. When dyestuff is applied by immersion in a dye bath or by application of the dye by brush, feather, or spray, it may respectively be described as "vat dyed", "brush dyed", "feather dyed", or "spray dyed", as the case may be. When dyestuff is applied only to the ends of the hair or fur, by feather or otherwise, it may also be described as "tip-dyed". The application of dyestuff to the leather or the skin (known in the trade as "tipping", as distinguished from tip-dyeing the hair or fur as above described) and which does not affect a change of, nor accentuate the natural color of the hair or fur, shall not be considered as "dyeing". When fluorescent dye is applied to a fur or fur product it may be described as "brightener added".

(e) The term "artificial coloring" means any change or improvement in color of a fur or fur product in any manner other than by pointing, bleaching, dyeing, or tip-dyeing, and shall be described in labeling, invoicing and advertising as "color altered" or "color added".

(f) The term "blended" shall not be used as a part of the required information to describe the pointing, bleaching, dyeing, tip-dyeing, or otherwise artificially coloring of furs.

(g) Where a fur or fur product is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored it shall be described as "natural".

(h) Where any fur or fur product is dressed, processed or treated with a solution or compound containing any metal and such compound or solution effects any change or improvement in the color of the hair, fleece or fur fiber, such fur or fur product shall be described in labeling, invoicing and advertising as "color altered" or "color added".

(i)(1) Any person dressing, processing or treating a fur pelt in such a manner that it is required under paragraph (e) or (h) of this section to be described as "color altered" or "color

added" shall place a black strip at least one half inch in width across the leather side of the skin immediately above the rump or place a stamp with a solid black center in the form of either a two inch square or a circle at least two inches in diameter on the leather side of the pelt and shall use black ink for all other stamps or markings on the leather side of the pelt.

(2) Any person dressing, processing or treating a fur pelt which after processing is considered natural under paragraph (g) of this section, shall place in white stripe at least one-half inch in width across the leather side of the skin immediately above the rump or place a stamp with a solid white center in the form of either a 2-inch square or a circle at least 2 inches in diameter on the leather side of the pelt and shall use white ink for all other stamps or markings on the leather side of the pelt.

(3) Any person dressing, processing or treating a fur pelt in such a manner that it is considered dyed under paragraph (d) of this section shall place a yellow stripe at least one-half inch in width across the leather side immediately above the rump or place a stamp with a solid yellow center in the form of either a 2-inch square or a circle at least 2 inches in diameter on the leather side of the pelt and shall use yellow ink for all other stamps or markings on the leather side of the pelt.

(4) In lieu of the marking or stamping otherwise required by paragraphs (i) (1), (2), and (3) of this section, any person dressing, processing or treating a fur pelt so as to be subject to the stamping or marking requirements of this paragraph may stamp the leather side of the pelt with the appropriate truthful designation "dyed", "color altered", "color added", or "natural", as the case may be, in such manner that the stamp will not be obliterated or mutilated by further processing and will remain clearly legible until the finished fur product reaches the ultimate consumer.

(5) Where, after assembling, fur garment shells, mats, plates or other assembled furs are processed or treated in such a manner as to fall within the stamping or marking provisions of this

paragraph, such assembled furs, in lieu of the stamping or marking of each individual pelt or piece, may be appropriately stamped on the leather side as provided in this paragraph in such a manner that the stamp will remain on the finished fur product and clearly legible until it reaches the ultimate consumer and will not be mutilated or obliterated by further processing.

(j) Any person who shall process a fur pelt in such a manner that after such processing it is no longer considered as natural shall clearly, conspicuously and legibly stamp on the leather side of the pelt and on required invoices relating thereto a lot number or other identifying number which relates to such records of the processor as will show the source and disposition of the pelts and the details of the processing performed. Such person shall also stamp his name or registered identification number on the leather side of the pelt.

(k) Any person who processes fur pelts of a type which are always considered as dyed under paragraph (d) of this section after processing or any person who processes fur pelts which are always natural at the time of sale to the ultimate consumer, which pelts for a valid reason cannot be marked or stamped as provided in this section, may file an affidavit with the Federal Trade Commission's Bureau of Textiles and Furs setting forth such facts as will show that the pelts are always dyed or natural as the case may be and that the stamping of such pelts cannot be reasonably accomplished. If the Bureau of Textiles and Furs is satisfied that the public interest will be protected by the filing of the affidavit it may accept such affidavit and advise the affiant that marking of the fur pelts themselves as provided in this section will be unnecessary until further notice. Any person filing such an affidavit shall promptly notify the Commission of any change in circumstances with respect to its operations.

(l) Any person subject to this section who incorrectly marks or fails to mark fur pelts as provided in paragraphs (i) and (j) of this section shall be deemed to have misbranded such products under section 4(l) of the Act. Any

person subject to this section who furnishes a false or misleading affidavit under paragraph (k) of this section or fails to give the notice required by paragraph (k) of this section shall be deemed to have neglected and refused to maintain the records required by section 8(d) of the Act.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961; 34 FR 381, Jan. 10, 1969; 36 FR 5689, Mar. 26, 1971; 41 FR 2636, Jan. 19, 1976]

§ 301.20 Fur products composed of pieces.

(a) Where fur products, or fur mats and plates, are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, such fact shall be disclosed as a part of the required information in labeling, invoicing and advertising. Where a fur product is made of the backs of skins such fact may be set out in labels, invoices and advertising.

(b) Where fur products, or fur mats and plates, are composed wholly or substantially of two or more of the parts set out in paragraph (a) of this section or one or more of such parts and other fur, disclosure in respect thereto shall be made by naming such parts or other fur in order of predominance by surface area.

(c) The terms "substantial part" and "substantially" mean ten per centum (10 percent) or more in surface area.

(d) The term "assembled" shall not be used in lieu of the terms set forth in paragraph (a) of this section to describe fur products or fur mats and plates composed of such parts.

§ 301.21 Disclosure of used furs.

(a) When fur in any form has been worn or used by an ultimate consumer it shall be designated "used fur" as a part of the required information in invoicing and advertising.

(b) When fur products or fur mats and plates are composed in whole or in part of used fur, such fact shall be disclosed as a part of the required information in labeling, invoicing and advertising; as for example:

Leopard
Used Fur
or
Dyed Muskrat

Contains Used Fur

§ 301.22 Disclosure of damaged furs.

(a) The term "damaged fur," as used in this part, means a fur, which, because of a known or patent defect resulting from natural causes or from processing, is of such a nature that its use in a fur product would decrease the normal life and durability of such product.

(b) When damaged furs are used in a fur product, full disclosure of such fact shall be made as a part of the required information in labeling, invoicing, or advertising such product; as for example:

Mink
Fur origin: Canada
Contains Damaged Fur

§ 301.23 Second-hand fur products.

When a fur product has been used or worn by an ultimate consumer and is subsequently marketed in its original, reconditioned, or rebuilt form with or without the addition of any furs or used furs, the requirements of the act and regulations in respect to labeling, invoicing and advertising of such product shall be applicable thereto, subject, however, to the provisions of § 301.14 of this part as to country of origin requirement, and in addition, as a part of the required information such product shall be designated "Second-hand", "Reconditioned-Second-hand", or "Rebuilt-Second-hand", as the case may be.

§ 301.24 Repairing, restyling and remodeling fur products for consumer.

When fur products owned by and to be returned to the ultimate consumer are repaired, restyled or remodeled and used fur or fur is added thereto, labeling of the fur product shall not be required. However, the person adding such used fur or fur to the fur product, or who is responsible therefor, shall give to the owner an invoice disclosing the information required under the act and regulations respecting the used fur or fur added to the fur product, subject, however, to the provisions of § 301.14 of this part as to country of origin requirements.

§ 301.25 Name required to appear on labels and invoices.

The name required by the act to be used on labels and invoices shall be the full name under which the person is doing business, and no trade-mark, trade name nor other name which does not constitute such full name shall be used in lieu thereof.

§ 301.26 Registered identification number.

(a) Registered numbers for use as the required identification in lieu of the name on fur product labels as provided in section 4(2)(E) of the act will be issued by the Commission to qualified persons residing in the United States upon receipt of an application duly executed in the form set out in paragraph (d) of this section.

(b)(1) Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable.

(2) Any change in name, business address, or legal business status of a person to whom a registered identification number has been assigned shall

be reported promptly to the Federal Trade Commission.

(3) Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the act and regulations, or when otherwise deemed necessary in the public interest.

(c) Registered identification numbers assigned under this rule may be used on labels required in labeling products subject to the provisions of the Wool Products Labeling Act and Textile Fiber Products Identification Act, and numbers previously assigned or to be assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

(d) Form of application for registered identification number (printed forms are available upon request at the offices of the Commission):

APPLICATION FOR A REGISTERED IDENTIFICATION NUMBER

Approved by OMB
3004-0038
Expires 11/1/84

1. LEGAL NAME OF APPLICANT FIRM

2. NAME UNDER WHICH APPLICANT DOES BUSINESS, IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY

☐ PROPRIETORSHIP☐ PARTNERSHIP☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (Include Zip Code)

5. TYPE OF BUSINESS (Put an 'X' in all the boxes that apply)

☐ MANUFACTURING☐ IMPORTING☐ WHOLESALE☐ OTHER (Please specify)

6. LIST PRODUCTS

7. CERTIFICATION

The products listed in item six (6) above are subject to one or more of the following Acts: The Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k), The Wool Products Labeling Act (15 U.S.C. §§ 68-68j), or the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). By filing this form with the Federal Trade Commission the company named above applies for a registered identification number to use on labels required by these Acts.

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PARTNER, OR CORPORATE OFFICIAL

8. NAME (Please print or type)

9. TITLE

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, The Wool Products Labeling Act, or the Fur Products Labeling Act provide that any marketer or manufacturer of fibrous or fur products covered by those Acts may apply for a registered identification number. Companies can then use the registered identification number, instead of the name under which the Company does business, on the labels, tags, tickets, or stamps that those Acts require to be attached to covered products.

In completing this application, please observe the following:

- (a) All blanks must be filled in. Include your Zip Code in item 4.
(b) In item 7 if the applicant firm is a partnership, a principal partner should sign. If a corporation, one of its principal officers should sign, giving his/her title in item 9.

(c) Send one completed copy to:

Federal Trade Commission
Los Angeles Regional Office
11000 Wilshire Blvd., Suite 13209
Los Angeles, CA 90024

A registered identification number (RIN) issued by the Commission continues in effect until revoked. The holder of the assigned number must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the holder's principal office and place of business must also be promptly reported.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961; 48 FR 12516, Mar. 25, 1983]

§ 301.27 Label and method of affixing.

At all times during the marketing of a fur product the required label shall have a minimum dimension of one and three-fourths (1¾) inches by two and three-fourths (2¾) inches. Such label shall be of a material of sufficient durability and shall be conspicuously affixed to the product in a secure manner and with sufficient permanency to remain thereon throughout the sale, resale, distribution and handling incident thereto, and shall remain on or be firmly affixed to the respective product when sold and delivered to the purchaser and purchaser-consumer thereof.

§ 301.28 Labels to be avoided.

Labels which are insecurely or inconspicuously attached, or which in the course of offering the fur product for sale, selling, transporting, marketing, or handling incident thereto, are likely to become detached, indistinct, obliterated, illegible, mutilated, inaccessible or inconspicuous shall not be used.

§ 301.29 Requirements in respect to disclosure on label.

(a) The required information shall be set out on the label in a legible manner and in not smaller than pica or twelve (12) point type, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label and no other information shall appear on such side except the lot or style designation and size. The lot or style designation may include non-deceptive terms indicating the type of garment, color of fur, and brand name for fur. The other side of the label may be used to set out any nonrequired information which is true and non-deceptive and which is not prohibited by the Act and regulations, but in all cases the animal name used shall be that set out in the Name Guide.

(b) The required information may be set out in hand printing provided it conforms to the requirements of paragraph (a) of this section, and is set out in indelible ink in a clear, distinct, legible and conspicuous manner. Handwriting shall not be used in setting out

any of the required information on the label.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961]

§ 301.30 Arrangement of required information on label.

(a) The applicable parts of the information required with respect to the fur to appear on labels affixed to fur products shall be set out in the following sequence:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artificially colored fur, when such is the fact;

(2) That the fur product contains fur which has been sheared, plucked, or letout, when such is the fact;

(3) That the fur contained in the fur product originated in a particular country (when so used the name of the country should be stated in the adjective form), when such is the fact;

(4) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(5) That the fur product is composed in whole of backs or in whole or in substantial part of paws, tails, bellies, sides flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(6) The name of the country of origin of any imported furs used in the fur product;

(7) Any other information required or permitted by the Act and regulations with respect to the fur.

NOTE: The information set out in paragraphs (a) (2) and (3) of this section and the term "backs" set out in paragraph (a)(5) of this section are not mandatory, but when and if used, shall be set out in the sequence noted.

(b) That part of the required information with respect to the name or registered identification number of the manufacturer or dealer may precede or follow the required information set out in paragraph (a) of this section.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961]

§ 301.31 Labeling of fur products consisting of two or more units.

(a) The label shall be attached to and appear upon each garment or separate article of wearing apparel subject to the act irrespective of whether two or more garments or articles may be sold or marketed together or in combination with each other.

(b) In the case of fur products manufactured for use in pairs or groups, only one label will be required if all units in the pair or group are of the same fur and have the same country of origin, and are firmly attached to each other when marketed and delivered in the channels of trade and to the purchaser-consumer and the information set out on the label is clearly applicable to each unit in the pair or group and supplies the information required under the act and rules and regulations.

§ 301.32 Fur product containing material other than fur.

(a) Where a fur product contains a material other than fur the content of which is required to be disclosed on labels under other statutes administered by the Commission, such information may be set out on the same side of the label and in immediate conjunction with the information required under this Act; as for example:

100% Wool
Interlining—100% Recycled Wool
Trim—Dyed Muskrat
Fur Origin: Canada
or
Body: 100% Cotton
Lining: 100% Nylon
Collar: Dyed Mouton Lamb
Fur Origin: Argentina

(b) Information which may be desirable or necessary to fully inform the purchaser of other material content of a fur product may be set out on the same side of the label as used for disclosing the information required under the Act and rules and regulations; as for example:

Body—Leather
Trim—Dyed Mink

[26 FR 3187, Apr. 14, 1961, as amended at 45 FR 44263, July 1, 1980]

§ 301.33 Labeling of samples.

Where samples of furs or fur products subject to the act are used to promote or effect sales of fur products, said samples, as well as the fur products purchased therefrom, shall be labeled to show the information required under the act and regulations.

§ 301.34 Misbranded or falsely invoiced fur products.

(a) If a person subject to section 3 of the Act with respect to a fur product finds that a fur product is misbranded he shall correct the label or replace same with a substitute containing the required information.

(b) If a person subject to section 3 of the Act with respect to a fur or fur product finds that the invoice issued to him is false or deceptive, he shall, in connection with any invoice issued by him in relation to such fur or fur product correctly set forth all of the information required by the Act and regulations in relation to such fur or fur product.

[26 FR 3187, Apr. 14, 1961]

§ 301.35 Substitution of labels.

(a) Persons authorized under the provisions of section 3(e) of the act to substitute labels affixed to fur products may do so, provided the substitute label is complete and carries all the information required under the act and rules and regulations in the same form and manner as required in respect to the original label. The substitute label need not, however, show the name or registered number appearing on the original label if the name or registered number of the person who affixes the substitute appears thereon.

(b) The original label may be used as a substitute label provided the name or registered number of the person making the substitution, together with the item number or mark assigned by such person to said fur product for record purposes is inserted thereon without interfering with or obscuring in any manner other required information. In connection with such substitution the name or registered number as well as any record numbers appearing on the original label may be removed.

(c) Persons substituting labels under the provision of this section shall maintain the records required under § 301.41 of this part.

§ 301.36 Sectional fur products.

(a) Where a fur product is composed of two or more sections containing different animal furs the required information with respect to each section shall be separately set forth in labeling, invoicing or advertising; as for example:

Dyed Rabbit
Fur origin: France
Trimming: Dyed Mouton-processed
Lamb
Fur origin: Argentina
or
Body: Dyed Kolinsky
Fur origin: Russia
Tail: Dyed Mink
Fur origin: Canada

(b) The provisions of this section shall not be interpreted so as to require the disclosure of very small amounts of different animal furs added to complete a fur product or skin such as the ears, snout, or under part of the jaw.

§ 301.37 Manner of invoicing furs and fur products.

(a) In the invoicing of furs and fur products, all of the required information shall be set out in a clear, legible, distinct and conspicuous manner. The invoice shall be issued at the time of the sale or other transaction involving furs or fur products, but the required information need not be repeated in subsequent periodic statements of account respecting the same furs or fur products.

(b) Non-required information or representations appearing in the invoicing of furs and fur products shall in no way be false or deceptive nor include any names, terms or representations prohibited by the act and regulations. Nor shall such information or representations be set forth or used in such manner as to interfere with the required information.

§ 301.38 Advertising of furs and fur products.

(a)(1) In advertising furs or fur products, all parts of the required informa-

tion shall be stated in close proximity with each other and, if printed, in legible and conspicuous type of equal size.

(2) Non-required information or representations appearing in the advertising of furs and fur products shall in no way be false or deceptive nor include any names, terms or representations prohibited by the act and regulations. Nor shall such information or representations be set forth or used in such manner as to interfere with the required information.

(b)(1) In general advertising of a group of fur products composed in whole or in part of imported furs having various countries of origin, the disclosure of such countries of origin may, by reference, be made through the use of the following statement in the advertisement in a clear and conspicuous manner:

Fur products labeled to show country of origin of imported furs

(2) The provisions of this paragraph shall not be applicable in the case of catalogue, mail order, or other types of advertising which solicit the purchase of fur products in such a manner that the purchaser or prospective purchaser would not have the opportunity of viewing the product and attached label prior to delivery thereof.

(c) In advertising of an institutional type referring only to the general nature or kind of business conducted or to the general classification of the types or kinds of furs or fur products manufactured or handled, and which advertising is not intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of any specific fur products or furs, the required information need not be set forth: *Provided, however,* That if reference is made in the advertisement to a color of the fur which was caused by dyeing, bleaching or other artificial coloring, such facts shall be disclosed in the advertising, and provided further, that when animal names are used in such advertising, such names shall be those set forth in the Fur Products Name Guide. For example, the kind of advertising contemplated by this paragraph is as follows:

X Fur Company
Famous for its Black Dyed Persian
Lamb Since 1900
or
X Company
Manufacturers of Fine Muskrat Coats,
Capes and Stoles

§ 301.39 Exempted fur products.

(a) Where the cost of any fur trim or other manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed twenty dollars (\$20) to the manufacturer of the finished fur product, or where a manufacturer's selling price of a fur product does not exceed twenty dollars (\$20) and the provisions of paragraphs (b) and (c) of this section are met, the fur products shall be exempted from the requirements of the Act and regulations; provided, however, that if the fur product is made of or contains any used fur, or if the fur product itself is or purports to be the whole skin of an animal with the head, ears, paws and tail, such as a choker or scarf, the fur product is to be labeled, invoiced and advertised in accordance with the requirements of the Act and regulations regardless of cost of the fur used in the fur product or manufacturer's selling price. The exemption provided for herein shall not be applicable (1) if any false, deceptive or misleading representations as to the fur contained in the fur product are made; or (2) if any representations as to the fur are made in labeling, invoicing or advertising without disclosing:

(i) In the case of labels, the information required to be disclosed under section 4(2) (A), (C), and (D) of the Act; (ii) in the case of advertising, the information required to be disclosed under section 5(a) (1), (3), and (4) of the Act; and (iii) in the case of invoicing, the information required to be disclosed under section 5(b)(1) (A), (C), and (D) of the Act.

(b) Where a fur product is exempt under this section from the requirements of the act and regulations, the manufacturer thereof shall maintain, in addition to the other records required under the act and regulations, adequate records showing the cost of the fur used in such fur product, or copies of invoices showing the manu-

facturer's selling price of the fur product, provided such price is used as the basis for exemption. Such records shall be preserved for at least three years.

(c) Where a fur product is exempt under this section and the manufacturer's selling price exceeds seven dollars (\$7.00), the manufacturer's or wholesaler's invoice shall carry information indicating such fur product is exempt from the provisions of the Act and regulations; as for example: "FPL EXEMPT."

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961; 26 FR 3771, May 2, 1961; 34 FR 381, Jan. 10, 1969]

§ 301.40 Item number or mark to be assigned to each fur product.

(a) For the purpose of identification, each fur product shall be assigned a separate item number or mark by the manufacturer thereof: *Provided, however,* That where all of the furs used in a group of fur products are obtained through the same purchase and from the same source and all of the required information with respect to such furs is identical, then a single item number or mark may be assigned to identify all of the fur products in such group. Each number or mark so assigned shall appear on the required label and invoice pertaining to such product and used for the identification thereof in the records required by § 301.41 of this part.

(b) Any subsequent dealer in fur products may assign to each fur product handled a different item number or mark to be used on the required label and invoice pertaining to such product, in lieu of that of the manufacturer or other supplier, and for the identification of such fur product in the records required by § 301.41 of this part.

§ 301.41 Maintenance of records.

(a) Pursuant to section 3(e) and section 8(d)(1), of the act, each manufacturer or dealer in fur products or furs, irrespective of whether any guaranty has been given or received, shall maintain records showing all of the required information relative to such fur products or furs in such manner as

will readily identify each fur or fur product manufactured or handled.

(b) The records to be maintained under this section shall include copies of all purchase orders, sales contracts, and invoices; business correspondence; manufacturing records, advertising matter, and all other data showing:

(1) The purchase and receipt of all fur products and furs handled;

(2) The respective item number or mark assigned to each fur product by the manufacturer or supplier thereof as required by § 301.40 of this part;

(3) The item number or mark which may be assigned to any particular fur product by a subsequent dealer in lieu of that assigned by the manufacturer or supplier thereof, as permitted by § 301.40 of this part;

(4) That the fur product manufactured or handled is "second hand", when such is the fact;

(5) That the fur handled or the fur product manufactured or handled contains or is composed of pointed, bleached, dyed, or tip-dyed fur, when such is the fact;

(6) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur handled or the fur contained in each fur product manufactured or handled;

(7) That the fur product or fur mats or plates manufactured or handled are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces or waste fur, when such is the fact;

(8) That the fur handled is used or the fur product manufactured or handled contains or is composed of used or damaged furs, when such is the fact;

(9) The name or names of the countries of origin of all imported furs handled or imported furs contained in each fur product manufactured or handled;

(10) All of the required information including the required item number or mark appearing on any label affixed to a fur product which is removed for the purpose of substitution;

(11) The sale or other disposition of each fur handled and fur product manufactured or handled.

(12) That the requirements of § 301.19 of this part (Rule 19) have been complied with.

In connection with the aforesaid action, the Commission announces that the following method may be used for detection of parts per million of iron and copper in hairs from fur pelts including hairs from mink pelts.

Procedure for detection of parts per million of iron and copper in hairs from fur pelts including mink hairs

A recommended method for preparation of samples would be:

Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of one-sixteenth inch. The pliers should be inserted at the same angle as the guard hairs with the tip opened to one-quarter inch. After contact with the hide, the tip should be raised about one-quarter inch, closed tightly and pulled quickly and firmly to remove the hair.

Place an accurately weighed sample of approximately 0.1000 grams of mink hair into a beaker with 20 ml. concentrated nitric acid. Evaporate just to dryness on a hot plate.

If there is any organic matter still present, add 10 ml. of concentrated nitric acid (see footnote) and again evaporate just to dryness on a hot plate. This step should be repeated until the nitric acid solution becomes clear to light green. Add 10 ml. of 1 percent hydrochloric acid to the dried residue in the beaker. Warm on a hot plate to insure complete solution of the residue.

A recommended analytical procedure would be atomic absorption spectrophotometry. In testing for iron, the atomic absorption instrument must have the capability of a 2 angstrom band pass at the 2483 Å line.

When analyzing for iron, the air-acetylene flame should be as lean as possible.

A reagent blank should be carried through the entire procedure as outlined above and the final results corrected for the amounts of iron and copper found in the reagent blank.

FOOTNOTE: If facilities are available for handling perchloric acid, a preferred alternate to the additional nitric acid treatment would be to add 2 ml. of perchloric acid and 8 ml. of nitric acid, cover the beaker with a watch glass and allow the solution to become clear to light green before removal of the watch glass and evaporation just to dryness.

[17 FR 6075, July 8, 1952, as amended at 34 FR 382, Jan. 10, 1969]

§ 301.42 Deception as to nature of business.

When necessary to avoid deception, the name of any person other than the manufacturer of the fur product appearing on the label or invoice shall be accompanied by appropriate words showing that the fur product was not manufactured by such person; as for example:

Distributed by _____ or
_____ Wholesalers

§ 301.43 Use of deceptive trade or corporate names, trademarks or graphic representations prohibited.

No person shall use in labeling, invoicing or advertising any fur or fur product a trade name, corporate name, trademark or other trade designation or graphic representation which misleads or deceives or has the capacity or tendency to mislead or deceive purchasers, prospective purchasers or the consuming public as to:

- (a) The character of the product including method of construction;
- (b) The name of the animal producing the fur;
- (c) The method or manner of distribution; or
- (d) The geographical or zoological origin of the fur.

§ 301.44 Misrepresentation of prices.

- (a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.
- (b) No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.
- (c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "made to sell for", being "worth" or "valued at" a

certain price, or by similar statements, unless such claim or representation is true in fact.

(d) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being of a certain value or quality unless such claims or representations are true in fact.

(e) Persons making pricing claims or representations of the types described in paragraphs (a), (b), (c) and (d) of this section shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

(f) No person shall, with respect to a fur or fur product, advertise such fur or fur product by the use of an illustration which shows such fur or fur product to be a higher priced product than the one so advertised.

(g) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being "bankrupt stock", "samples", "show room models", "Hollywood Models", "Paris Models", "French Models", "Parisian Creations", "Furs Worn by Society Women", "Clearance Stock", "Auction Stock", "Stock of a business in a state of liquidation", or similar statements, unless such representations or claims are true in fact.

§ 301.45 Representations as to construction of fur products.

(a) No misleading nor deceptive statements as to the construction of fur products shall be used directly or indirectly in labeling, invoicing or advertising such products. (For example, a fur product made by the skin-on-skin method should not be represented as having been made by the letout method.)

(b) Where a fur product is made by the method known in the trade as letting-out, or is made of fur which has been sheared or plucked, such facts may be set out in labels, invoices and advertising.

§ 301.46 Reference to guaranty by Government prohibited.

No representation nor suggestion that a fur or fur product is guaranteed under the act by the Government, or any branch thereof, shall be made in

the labeling, invoicing or advertising in connection therewith.

§ 301.47 Form of separate guaranty.

The following is a suggested form of separate guaranty under section 10 of the act which may be used by a guarantor residing in the United States, on and as part of an invoice in which the merchandise covered is listed and specified and which shows the date of such document, the date of shipment of the merchandise and the signature and address of the guarantor:

We guarantee that the fur products or furs specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Fur Products Labeling Act and rules and regulations thereunder.

§ 301.48 Continuing guaranties.

(a)(1) Under section 10 of the Act any person residing in the United States and handling fur or fur products may file a continuing guaranty with the Federal Trade Commission. When filed with the Commission a continuing guaranty shall be fully executed in duplicate. Forms for use in preparing continuing guaranties shall be supplied by the Commission upon request.

(2) Continuing guaranties filed with the Commission shall continue in effect until revoked. The guarantor shall promptly report any change in business status to the Commission.

(3) The following is the prescribed form of continuing guaranty:

CONTINUING GUARANTY

Approved by OMB
3004-0036
Expires 11-1-84

1. LEGAL NAME OF GUARANTOR FIRM

2. NAME UNDER WHICH GUARANTOR FIRM DOES BUSINESS (If different from legal name)

3. TYPE OF COMPANY

☐ PROPRIETORSHIP

☐ PARTNERSHIP

☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (Include Zip Code)

5. LAW UNDER WHICH THE CONTINUING GUARANTY IS TO BE FILED (Put an X in the appropriate boxes)

☐ Under the Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k). The company named above, which manufactures, markets, or handles textile fiber products, guarantees that when it ships or delivers any textile fiber product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Textile Fiber Products Identification Act and the rules and regulations under that Act.

☐ Under the Wool Products Labeling Act (15 U.S.C. §§ 68-68k). The company named above, which manufactures, markets, or handles wool products, guarantees that when it ships or delivers any wool product, the product will not be misbranded within the meaning of the Wool Products Labeling Act and the rules and regulations under that Act.

☐ Under the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). The company named above, which manufactures, markets, or handles fur products, guarantees that when it ships or delivers any fur product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Fur Products Labeling Act and the rules and regulations under that Act.

6. CERTIFICATION

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PRINCIPAL PARTNER, OR CORPORATE OFFICIAL

7. NAME (Please print or type)

8. TITLE

9. CITY AND STATE WHERE SIGNED

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any marketer or manufacturer of fibrous or fur products or furs covered by those Acts may file a continuing guaranty with the Federal Trade Commission. A continuing guaranty on file assures customer firms that the guarantor's products are in conformance with the Acts under which the guarantor has filed. Customer firms rely on the continuing guaranties for protection from liability if violations occur.

In completing this form, please observe the following:

(a) All appropriate blanks on the form should be filled in, include your Zip Code in item 4.

(b) In item 8, if the guarantor firm is a partnership, a principal partner should sign. If a corporation, one of its principal officers should sign, giving his/her title in item 8.

(c) Send two completed copies to:
Federal Trade Commission
Los Angeles Regional Office
11000 Wilshire Blvd., Suite 13209
Los Angeles, CA 90024

Continuing guaranties filed with the Commission continue in effect until revoked. The guarantor must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the guarantor's principal office or place of business must also be promptly reported.

DO NOT USE THIS SPACE

Filed _____ 19 ____

FEDERAL TRADE COMMISSION

FTC Form 31-A (Rev. 12-82)

(b) Any person who has a continuing guaranty on file with the Commission may, during the effective date of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product guaranteed the following: "Continuing guaranty under the Fur Products Labeling Act filed with the Federal Trade Commission."

(c) Any person who falsely represents in writing that he has a continuing guaranty on file with the Federal Trade Commission when such is not a fact shall be deemed to have furnished a false guaranty under section 10(b) of the Act.

[26 FR 3188, Apr. 14, 1961, as amended at 48 FR 12517, Mar. 25, 1983]

§ 301.48a Guaranties not received in good faith.

A guaranty shall not be deemed to have been received in good faith within the meaning of section 10(a) of the Act:

(a) Unless the recipient of such guaranty shall have examined the required label, required invoice and advertisement relating to the fur product or fur so guaranteed;

(b) If the recipient of the guaranty has knowledge that the fur or fur product guaranteed is misbranded, falsely invoiced or falsely advertised.

[26 FR 3188, Apr. 14, 1961]

§ 301.49 Deception in general.

No furs nor fur products shall be labeled, invoiced, or advertised in any manner which is false, misleading or deceptive in any respect.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT¹

Sec.

303.1 Terms defined.

303.2 General requirements.

¹The Federal Trade Commission on May 20, 1959, announced its policy with regard to section 15 of the Textile Fiber Products Identification Act, which states in part that "The Commission shall provide for the exception of any textile fiber product acquired

303.3 Fibers present in amounts of less than 5 percent.

303.4 English language requirement.

303.5 Abbreviations, ditto marks, and asterisks prohibited.

303.6 Generic names of fibers to be used.

303.7 Generic names and definitions for manufactured fibers.

303.8 Procedure for establishing generic names for manufactured fibers.

303.9 Use of fur-bearing animal names and symbols prohibited.

303.10 Fiber content of special types of products.

303.11 Floor coverings containing backings, fillings, and padding.

303.12 Trimmings of household textile articles.

303.13 Sale of remnants and products made of remnants.

303.14 Products containing unknown fibers.

prior to the effective date of this Act." The announcement reads:

"The exception provided by section 15 of the Act shall apply to textile fiber products acquired prior to the effective date of the Act (March 3, 1960) where such products are marketed or handled on or after March 3, 1960 in the same basic form as that in which they were acquired, but shall not apply to textile fiber products manufactured or processed on or after March 3, 1960, from other textile fiber products acquired prior to that date where such manufacturing or processing changes the basic form of the textile fiber product to the extent that it becomes a different type of product. For example, the exception would apply to yarns, fabrics or garments acquired prior to March 3, 1960, which are marketed or handled on or after that date as yarns, fabrics or garments, respectively, without any change in the form of such products, but such exception would not apply to fabrics manufactured on or after March 3, 1960, from yarns or fibers acquired prior to that date, or to garments manufactured on or after March 3, 1960, from fabrics acquired prior to that date. Fabrics acquired in the greige before March 3, 1960, but processed or finished after that date would not lose their right to exception as a result of such processing or finishing operation.

"On or after March 3, 1960, any person who desires to claim the exception provided by section 15 of the Act must be able to establish by records or other competent means that the products as to which he claims the exception were acquired in the same basic form prior to March 3, 1960, and that he is entitled to the exception claimed."

- 303.15 Required label and method of affixing.
- 303.16 Arrangement and disclosure of information on labels.
- 303.17 Use of fiber trademarks and generic names on labels.
- 303.18 Terms implying fibers not present.
- 303.19 Name or other identification required to appear on labels.
- 303.20 Registered identification numbers.
- 303.21 Marking of samples, swatches, or specimens and products sold therefrom.
- 303.22 Products containing linings, interlinings, fillings, and paddings.
- 303.23 Textile fiber products containing superimposed or added fibers.
- 303.24 Flee fabrics and products composed thereof.
- 303.25 Sectional disclosure of content.
- 303.26 Ornamentation.
- 303.27 Use of the term "All" or "100%."
- 303.28 Products contained in packages.
- 303.29 Labeling of pairs or products containing two or more units.
- 303.30 Textile fiber products in form for consumer.
- 303.31 Invoice in lieu of label.
- 303.32 Products containing reused stuffing.
- 303.33 Country where imported textile fiber products are processed or manufactured.
- 303.34 Country of origin in mail order advertising.
- 303.35 Use of terms "virgin" or "new."
- 303.36 Form of separate guaranty.
- 303.37 Form of continuing guaranty from seller to buyer.
- 303.38 Continuing guaranty filed with Federal Trade Commission.
- 303.39 Maintenance of records.
- 303.40 Use of terms in written advertisements which imply presence of a fiber.
- 303.41 Use of fiber trademarks and generic names in advertising.
- 303.42 Arrangement of information in advertising textile fiber products.
- 303.43 Fiber content tolerances.
- 303.44 Products not intended for uses subject to the act.
- 303.45 Exclusions from the act.

AUTHORITY: 15 U.S.C. 70 *et seq.*, unless otherwise noted.

SOURCE: 24 FR 4430, June 2, 1959, unless otherwise noted.

§ 303.1 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The term "Act" means the "Textile Fiber Products Identification Act" (approved September 2, 1958, 85th Congress, 2d Sess.; 15 U.S.C. 70, 72 Stat. 1717).

(b) The terms "rule," "rules," "regulations," and "rules and regulations"

mean the rules and regulations prescribed by the Commission pursuant to section 7(c) of the Act.

(c) The definition of terms contained in section 3 of the Act shall be applicable also to such terms when used in rules promulgated under the Act.

(d) The term "United States" means the several States, the District of Columbia, and the Territories and possessions of the United States.

(e) The terms "required information" and "information required" mean such information as is required to be disclosed on labels or invoices and in advertising under the Act and regulations.

(f) The terms "label," "labels," "labeled," and "labeling" mean the stamp, tag, label, or other means of identification, or authorized substitute therefor, required to be on or affixed to textile fiber products by the Act and regulations and on which the information required is to appear.

(g) The terms "marketing or handling" and "marketed or handled," when applied to textile fiber products, mean any one or all of the transactions set forth in section 3 of the Act.

(h) The terms "invoice" and "invoice or other paper" mean a written account, order, memorandum, list, or catalogue, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

(i) The term "outer coverings of furniture, mattresses, and box springs" means those coverings as are permanently incorporated in such articles.

(j) The term "wearing apparel" means any costume or article of clothing or covering for any part of the body worn or intended to be worn by individuals.

(k) The term "beddings" means sheets, covers, blankets, comforters, pillows, pillowcases, quilts, bedspreads, pads, and all other textile fiber products used or intended to be used on or about a bed or other place for reclining or sleeping but shall not include furniture, mattresses or box springs.

(l) The term "headwear" means any textile fiber product worn exclusively

on or about the head or face by individuals.

(m) The term "backings," when applied to floor coverings, means that part of a floor covering to which the pile, face, or outer surface is woven, tufted, hooked, knitted, or otherwise attached, and which provides the structural base of the floor covering. The term "backing" shall also include fabrics attached to the structural base of the floor covering in such a way as to form a part of such structural base, but shall not include the pile, face, or outer surface of the floor covering or any part thereof.

(n) The term "elastic material" means a fabric composed of yarn consisting of an elastomer or a covered elastomer.

(o) The term "coated fabric" means any fabric which is coated, filled, impregnated, or laminated with a continuous-film-forming polymeric composition in such a manner that the weight added to the base fabric is at least 35 percent of the weight of the fabric before coating, filling, impregnation, or lamination.

(p) The term "uphoistered product" means articles of furniture containing stuffing and shall include mattresses and box springs.

(q) The term "ornamentation" means any fibers or yarns imparting a visibly discernible pattern or design to a yarn or fabric.

(r) The term "fiber trademark" means a word or words used by a person to identify a particular fiber produced or sold by him and to distinguish it from fibers of the same generic class produced or sold by others. Such term shall not include any trade mark, product mark, house mark, trade name or other name which does not identify a particular fiber.

(s) The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

(t) The term "recycled wool" means (1) the resulting fiber when wool has been woven or felted into a wool product which, without ever having been

utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state, or (2) the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(u) The terms "mail order catalog" and "mail order promotional material" mean any printed materials used in the direct sale or direct offering for sale of textile products that are distributed or shown to ultimate consumers and solicit the ultimate consumers to purchase such textile products by mail, telephone or some other method without examining the actual product purchased.

[24 FR 4480, June 2, 1959, as amended at 45 FR 44263, July 1, 1980; 50 FR 15106, Apr. 17, 1985]

§ 303.2 General requirements.

(e) Each textile fiber product, except those exempted or excluded under section 12 of the Act, shall be labeled or invoiced in conformity with the requirements of the Act and regulations.

(b) Any advertising of textile fiber products subject to the Act shall be in conformity with the requirements of the Act and regulations.

(c) The requirements of the Act and regulations shall not be applicable to products required to be labeled under the Wool Products Labeling Act of 1939 (Pub. L. 76-850, 15 U.S.C. 68, 54 Stat. 1128).

(d) Any person marketing or handling textile fiber products who shall cause or direct a processor or finisher to label, invoice, or otherwise identify any textile fiber product with required information shall be responsible under the Act and regulations for any failure of compliance with the Act and regulations by reason of any statement or omission in such label, invoice, or other means of identification utilized in accordance with his direction: *Provided*, That nothing herein shall relieve the processor or finisher of any duty or liability to which he may be subject under the Act and regulations.

§ 303.3 Fibers present in amounts of less than 5 percent.

(a) Except as permitted in paragraph (b) of this section and sections 4(b)(1) and 4(b)(2) of the Act, as amended, no fiber present in the amount of less than 5 per centum of the total fiber weight shall be designated by its generic name or fiber trademark in disclosing the constituent fibers in required information, but shall be designated as "other fiber." Where more than one of such fibers are present in a product they shall be designated in the aggregate as "other fibers."

(b) Where a textile fiber present in a textile fiber product in the amount of less than 5 per centum of the total fiber weight of the product has a clearly established and definite functional significance where present in the product in the amount contained in such product so as to fall within the provisions of sections 4(b)(1) and 4(b)(2) of the Act, as amended, relating to the disclosure of fibers having such functional significance and it is desired to disclose the presence of such fiber by generic name or fiber trademark name, the generic name of such fiber, the percentage by weight of the fiber in the total fiber content of the product, and the functional significance of the fiber shall be set out in the required fiber content disclosure, as for example:

96 percent Acetate,
4 percent Spandex for elasticity.

In making such disclosure all of the provisions of the Act and regulations setting forth the manner and form of disclosure of fiber content information including the provisions of §§ 303.17 of this part (Rule 17) and 303.41 of this part (Rule 41) relating to the use of generic names and fiber trademarks shall be applicable.

[30 FR 14253, Nov. 13, 1965]

§ 303.1 English language requirement.

All required information shall be set out in the English language. If the required information appears in a language other than English, it also shall appear in the English language. The provisions of this section shall not

apply to advertisements in foreign language newspapers or periodicals, but such advertising shall in all other respects comply with the Act and regulations.

§ 303.5 Abbreviations, ditto marks, and asterisks prohibited.

(a) In disclosing required information, words or terms shall not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and shall not be abbreviated except as permitted in § 303.33(d) of this part.

(b) Where the generic name of a textile fiber is required to appear in immediate conjunction with a fiber trademark in advertising, labeling, or invoicing, a disclosure of the generic name by means of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the fiber trademark, shall not be sufficient in itself to constitute compliance with the Act and regulations.

§ 303.6 Generic names of fibers to be used.

(a) Except where another name is permitted under the Act and regulations, the respective generic names of all fibers present in the amount of 5 per centum or more of the total fiber weight of the textile fiber product shall be used when naming fibers in the required information; as for example: "cotton," "rayon," "silk," "linen," "nylon," etc.

(b) Where a textile fiber product contains the hair or fiber of a fur-bearing animal present in the amount 5 per centum or more of the total fiber weight of the product, the name of the animal producing such fiber may be used in setting forth the required information, provided the name of such animal is used in conjunction with the words "fiber," "hair," or "blend," as for example:

80 percent Rabbit hair.
20 percent Nylon.
or
80 percent Silk.
20 percent Mink fiber.

(c) The term "fur fiber" may be used to describe the hair or fur fiber or mixtures thereof of any animal or animals other than the sheep, lamb,

Angora goat, Cashmere goat, camel, alpaca, llama or vicuna where such hair or fur fiber or mixture is present in the amount of 5 per centum or more of the total fiber weight of the textile fiber product and no direct or indirect representations are made as to the animal or animals from which the fiber so designated was obtained; as for example:

60 percent Cotton.
40 percent Fur fiber,
or
50 percent Nylon.
30 percent Mink hair.
20 percent Fur fiber.

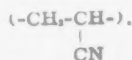
(d) Where textile fiber products subject to the Act contain (1) wool or (2) recycled wool in amounts of five per centum or more of the total fiber weight, such fibers shall be designated and disclosed as wool or recycled wool as the case may be.

[24 FR 4480, June 2, 1959, as amended by 45 FR 44263, July 1, 1980]

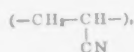
§ 303.7 Generic names and definitions for manufactured fibers.

Pursuant to the provisions of section 7(c) of the Act, the following generic names for manufactured fibers, together with their respective definitions, are hereby established:

(a) *Acrylic*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units



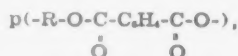
(b) *Modacrylic*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of less than 85 percent but at least 35 percent by weight of acrylonitrile units



except fibers qualifying under paragraph (j)(2) of this section and fibers qualifying under paragraph (q) of this

section. (Sec. 7, 72 Stat. 1717; 15 U.S.C. section 70e)

(c) *Polyester*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units,



and para substituted hydroxy-benzoate units,



(d) *Rayon*. A manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15 percent of the hydrogens of the hydroxyl groups.

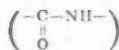
(e) *Acetate*. A manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92 percent of the hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.

(f) *Saran*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 80 percent by weight of vinylidene chloride units $(-\text{CH}_2-\text{CCl}_2-)$.

(g) *Azlon*. A manufactured fiber in which the fiber-forming substance is composed of any regenerated naturally occurring proteins.

(h) *Nytril*. A manufactured fiber containing at least 85 percent of a long chain polymer of vinylidene dinitrile $(-\text{CH}_2-\text{C}(\text{CN})_2-)$ where the vinylidene dinitrile content is no less than every other unit in the polymer chain.

(i) *Nylon*. A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polyamide in which less than 85 percent of the amide

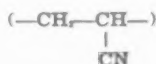


linkages are attached directly to two aromatic rings.

(j) *Rubber*. A manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories:

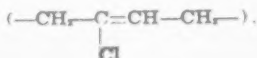
(1) A manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (noncrystalline) polyolefins.

(2) A manufactured fiber in which the fiber-forming substance is a copolymer of acrylonitrile and a diene (such as butadiene) composed of not more than 50 percent but at least 10 percent by weight of acrylonitrile units



The term "lastrile" may be used as a generic description for fibers falling within this category.

(3) A manufactured fiber in which the fiber-forming substance is a polychloroprene or a copolymer of chloroprene in which at least 35 percent by weight of the fiber-forming substance is composed of chloroprene units



(k) *Spandex*. A manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85 percent of a segmented polyurethane.

(l) *Vinal*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 50 percent by weight of vinyl alcohol units ($\text{—CH}_2\text{—CHOH—}$), and in which the total of the vinyl alcohol units and any one or more of the

various acetal units is at least 85 percent by weight of the fiber.

(m) *Olefin*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of ethylene, propylene, or other olefin units, except amorphous (noncrystalline) polyolefins qualifying under paragraph (j)(1) of this section [Rule 7].

(n) *Vinyon*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of vinyl chloride units ($\text{—CH}_2\text{—CHCl—}$).

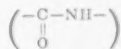
(o) *Metallic*. A manufactured fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal.

(p) *Glass*. A manufactured fiber in which the fiber-forming substance is glass.

(q) *Anider*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 50 percent by weight of one or more esters of a monohydric alcohol and acrylic acid, $\text{CH}_2\text{—CH—COOH}$.

(r) *Novoloid*. A manufactured fiber containing at least 85 percent by weight of a cross-linked novolac.

(s) *Aramid*. A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polyamide in which at least 85 percent of the amide



linkages are attached directly to two aromatic rings.

(Sec. 6, 72 Stat. 1717; 15 U.S.C. 70e)

[24 FR 4480, June 2, 1959; 24 FR 5737, July 17, 1959, as amended at 31 FR 2652, Feb. 11, 1966; 31 FR 3002, Feb. 22, 1966; 34 FR 14595, Sept. 19, 1969; 38 FR 21782, Aug. 13, 1973; 38 FR 34115, Dec. 11, 1973; 39 FR 1834, Jan. 15, 1974]

§ 303.8 Procedure for establishing generic names for manufactured fibers.

(a) Prior to the marketing or handling of a manufactured fiber for

which no generic name has been established by the Commission, the manufacturer or producer thereof shall file a written application with the Commission, requesting the establishment of a generic name for such fibers, stating therein:

(1) The reasons why the applicant's fiber should not be identified by one of the generic names established by the Commission in § 303.7 of this part;

(2) The chemical composition of the fiber, including the fiber-forming substances and respective percentages thereof, together with samples of the fiber;

(3) Suggested names for consideration as generic, together with a proposed definition for the fiber;

(4) Any other information deemed by the applicant to be pertinent to the application, including technical data in the form of test methods;

(5) The earliest date on which the application proposes to market or handle the fiber in commerce for other than developmental or testing purposes.

(b) Upon receipt of the application, the Commission will, within sixty (60) days, either deny the application or assign to the fiber a numerical or alphabetical symbol for temporary use during further consideration of such application.

(c) After taking the necessary procedure in consideration of the application, the Commission in due course shall establish a generic name or advise the applicant of its refusal to grant the application and designate the proper existing generic name for the fiber.

§ 303.9 Use of fur-bearing animal names and symbols prohibited.

(a) The advertising or the labeling of a textile fiber product shall not contain any names, words, depictions, descriptive matter, or other symbols which connote or signify a fur-bearing animal, unless such product or the part thereof in connection with which the names, words, depictions, descriptive matter, or other symbols are used is a fur product within the meaning of the Fur Products Labeling Act.

(b) Subject to the provisions of paragraph (a) of this section and § 303.6 of

this part, a textile fiber product shall not be described or referred to in any manner in an advertisement or label with:

(1) The name or part of the name of a fur-bearing animal, whether as a single word or a combination word, or any coined word which is phonetically similar to a fur-bearing animal name, or which is only a slight variation in spelling of a fur-bearing animal name or part of the name. As for example, such terms as "Ermine," "Mink," "Persian," "Broadtail," "Beaverton," "Marmink," "Sablelon," "Lam," "Pershian," "Minx," or similar terms shall not be used.

(2) Any word or name symbolic of a fur-bearing animal by reason of conventional usage or by reason of its close relationship with fur-bearing animals. As for example, such terms as "guardhair," "underfur," and "mutation," or similar terms, shall not be used.

(c) Nothing contained herein shall prevent:

(1) The nondeceptive use of animal names or symbols in referring to a textile fiber product where the fur of such animal is not commonly or commercially used in fur products, as that term is defined in the Fur Products Labeling Act, as for example "kitten soft," "Bear Brand", etc.

(2) The nondeceptive use of a trademark or trade name containing the name, symbol, or depiction of a fur-bearing animal unless:

(i) The textile fiber product in connection with which such trademark or trade name is used simulates a fur or fur product; or

(ii) Such trademark or trade name is used in any advertisement of a textile fiber product together with any depiction which has the appearance of a fur or fur product; or

(iii) The use of such trademark or trade name is prohibited by the Fur Products Labeling Act.

[24 FR 4480, June 2, 1959, as amended at 28 FR 722, Jan. 16, 1963]

§ 303.10 Fiber content of special types of products.

(a) Where a textile product is made wholly of elastic yarn or material,

with minor parts of non-elastic material for structural purposes, it shall be identified as to the percentage of the elastomer, together with the percentage of all textile coverings of the elastomer and all other yarns or materials used therein.

Where a textile fiber product is made in part of elastic material and in part of other fabric, the fiber content of such fabric shall be set forth sectionally by percentages as in the case of other fabrics. In such cases the elastic material may be disclosed by describing the material as elastic followed by a listing in order of predominance by weight of the fibers used in such elastic, including the elastomer, where such fibers are present by 5 per centum or more with the designation "other fiber" or "other fibers" appearing last when fibers required to be so designated are present. An example of labeling under this paragraph is:

Front and back non-elastic sections:

50 percent Acetate.

50 percent Cotton.

Elastic: Rayon, cotton, nylon, rubber.

(b) Where drapery or upholstery fabrics are manufactured on hand-operated looms for a particular customer after the sale of such fabric has been consummated, and the amount of the order does not exceed 100 yards of fabric, the required fiber content disclosure may be made by listing the fibers present in order of predominance by weight with any fiber or fibers required to be designated as "other fiber" or "other fibers" appearing last, as for example:

Rayon.

Wool.

Acetate.

Metallic.

Other fibers.

(c)(1) Where a manufactured textile fiber is essentially a physical combination or mixture of two or more chemically distinct constituents or components combined at or prior to the time of extrusion, which components if separately extruded would each fall within different existing definitions of textile fibers as set forth in § 303.7 of this part (Rule 7), the fiber content disclosure as to such fiber, shall for all purposes under the regulations in this

part (i) disclose such fact in the required fiber content information by appropriate nondeceptive descriptive terminology, such as "biconstituent fiber" or "multiconstituent fiber," (ii) set out the components contained in the fiber by the appropriate generic name specified in § 303.7 of this part (Rule 7) in the order of their predominance by weight, and (iii) set out the respective percentages of such components by weight.

(2) If the components of such fibers are of a matrix-fibril configuration, the term "matrix-fibril fiber" or "matrix fiber" may be used in setting forth the information required by this paragraph.

(3) Examples of proper fiber content designations under this paragraph are:

100% Biconstituent Fiber

(65% Nylon, 35% Polyester)

80% Matrix Fiber (60% Nylon, 40% Polyester)

15% Polyester

5% Rayon

(4) All of the provisions as to fiber content disclosures contained in the Act and regulations, including the provisions relative to fiber content tolerances and disclosures of fibers present in amounts of less than 5 per centum of the total fiber weight, shall also be applicable to the designations and disclosures prescribed by this paragraph.

[25 FR 7044, July 26, 1960, as amended at 30 FR 14253, Nov. 13, 1965; 34 FR 12134 July 19, 1969]

§ 303.11 Floor coverings containing backings, fillings, and paddings.

In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, the disclosure shall be made in such manner as to indicate that it relates only to the face, pile or outer surface of the floor covering and not to the backing, filling, or padding. Examples of the form of marking these types of floor coverings as to fiber content are as follows:

100% Cotton Pile

Face—60% Rayon, 40% Cotton

Outer Surface—100% Wool

§ 303.12 Trimmings of household textile articles.

(a) Trimmings incorporated in articles of wearing apparel and other household textile articles may, among other forms of trim, include: (1) Rick-rack, tape, belting, binding, braid, labels (either required or non-required), collars, cuffs, wrist bands, leg bands, waist bands, gussets, gores, welts, and findings, including superimposed garters in hosiery, and elastic materials and threads inserted in or added to the basic product or garment in minor proportion for holding, reinforcing or similar structural purposes; (2) decorative trim, whether applied by embroidery, overlay, applique, or attachment; and (3) decorative patterns or designs which are an integral part of the fabric out of which the household textile article is made: *Provided*, That such decorative trim or decorative pattern or design, as specified in paragraphs (a) (2) and (3) of this section, does not exceed 15 percent of the surface area of the household textile article. If no representation is made as to the fiber content of the decorative trim or decoration, as provided for in paragraphs (a) (2) and (3) of this section, the fiber content designation of the basic fabric shall be followed by the statement "exclusive of decoration."

(b) The term "findings" may also include elastic material which constitutes a part of the basic fabric or material out of which the household textile article is made, where such elastic material does not exceed 20 percent of the surface area of the household textile article: *Provided*, That the required information as to fiber content of products subject to this paragraph is followed by the statement "exclusive of elastic."

§ 303.13 Sale of remnants and products made of remnants.

(a) In disclosing the required fiber content information as to remnants of fabric which are for practical purposes of unknown or undeterminable fiber content:

(1) The fiber content disclosure of such remnants of fabrics may be designated in the required information as

"remnants of undetermined fiber content."

(2) Where such remnants of fabrics are displayed for sale at retail, a conspicuous sign may, in lieu of individual labeling, be used in immediate conjunction with such display, stating with respect to required fiber content disclosure that the goods are "remnants of undetermined fiber content."

(3) Where textile fiber products are made of such remnants, the required fiber content information of the products may be disclosed as "made of remnants of undetermined fiber content." If any representations as to fiber content are made with respect to such remnants, the provisions of this paragraph shall not apply.

(b) Where remnants of fabrics are marketed or handled in bales, bundles, or packages and are all of the same fiber content or are designated in the manner permitted by paragraph (a) of this section, the individual remnants need not be labeled if the bales, bundles, or packages containing such remnants are labeled with the required information including fiber content percentages or the designation permitted by paragraph (a) of this section.

(c) Where remnants of fabrics of the same fiber content are displayed for sale at retail, a conspicuous sign may, in lieu of individual labeling, be used in immediate conjunction with such display, stating the fiber content information with respect to such remnants; as for example: "remnants, 100 percent cotton," "remnants, 50 percent rayon, 50 percent acetate," etc.

§ 303.14 Products containing unknown fibers.

(a) Where a textile fiber product is made from miscellaneous scraps, rags, odd lots, secondhand materials, textile by-products, or waste materials of unknown, and for practical purposes, undeterminable fiber content, the required fiber content disclosure may, when truthfully applicable, in lieu of the fiber content disclosure otherwise required by the Act and regulations, indicate that such product is composed of miscellaneous scraps, rags, odd lots, textile by-products, secondhand materials (in case of secondhand

materials, words of like import may be used) or waste materials, as the case may be, of unknown or undetermined fiber content, as for example:

Made of miscellaneous scraps of undetermined fiber content

100% unknown fibers—rags

All undetermined fibers—textile by-products

100% miscellaneous odd lots of undetermined fiber content

Secondhand materials—fiber content unknown

Made of unknown fibers—waste materials

(b) Where a textile fiber product is made in part from miscellaneous scraps, rags, odd lots, textile by-products, second-hand materials or waste materials of unknown and, for practical purposes, undeterminable fiber content together with a percentage of known or determinable fibers, the required fiber content disclosure may, when truthfully applicable, in lieu of the fiber content disclosure otherwise required by the Act and regulations, indicate the percentage of miscellaneous scraps, rags, odd lots, secondhand materials (in case of secondhand materials, words of like import may be used), textile by-products, or waste materials of unknown or undetermined fiber content and the percentage of known fibers, as for example:

45% Rayon

30% Acetate

25% Miscellaneous scraps of undetermined fiber content.

60% Cotton

40% Unknown fibers—waste materials.

40% Acrylic

20% Modacrylic

40% Undetermined fibers—odd lots.

50% Polyester

30% Cotton

20% Textile by-products of undetermined fiber content.

50% Rayon

50% Secondhand materials—fiber content unknown.

45% Acetate

30% Cotton

25% Miscellaneous rags—undetermined fiber content.

(c) No representation as to fiber content shall be made as to any textile product or any portion of a textile fiber product designated as composed of unknown or undetermined fibers. If any such representation is made, a full

and complete fiber content disclosure shall be required.

(d) Nothing contained in this section shall excuse a full disclosure as to fiber content if the same is known or practically ascertainable.

[25 FR 4317, May 14, 1960]

§ 303.15 Required label and method of affixing.

(a) A label is required to be affixed to each textile product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

(b) Each textile fiber product with a neck must have the label affixed to the inside center of the neck midway between the shoulder seams *provided*, however, that the required label may appear in close proximity to another label affixed to the inside center of the neck as long as the required label remains conspicuous to the consumer and, *provided further*, that if the country of origin is disclosed on a label affixed to the inside center of the neck or in close proximity, the label containing the country of origin, fiber content, and RN or name of the company may appear in another conspicuous location on the inside or on the outside of the garment. All other textile products shall have the label affixed to a conspicuous spot on the inner side of the product or in a conspicuous place on the outside of the product.

(c) In the case of hosiery products, this section shall not be construed as requiring the affixing of a label to each hosiery product contained in a package if, (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a label bearing the required information for the hosiery products contained in the package, and (3) the information on the label affixed to the package is equally applicable to each textile fiber product contained therein.

[50 FR 15106, Apr. 17, 1985]

§ 303.16 Arrangement and disclosure of information on labels.

(a) The information with respect to textile fiber products required to be shown and displayed upon the label shall be that which is required by the Act and Regulations, including the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of 5 per centum or more and any fibers disclosed in accordance with paragraph § 303.3(b) of this part (Rule 3) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as "other fiber" or "other fibers" appearing last.

(2) The name, provided for in § 303.19 of this part (Rule 19), or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured as provided for in Rule 33.

(b) All parts of the required information shall be conspicuously and separately set out on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser, and all parts of the fiber content information shall appear in type or lettering of equal size and conspicuousness:

Provided, however, That the required name or registered identification number may appear on the reverse side of the label if it is conspicuous and accessible: *And provided further,* That the required name or registered identification number may be conspicuously set out on a separate label which is prominently and conspicuously displayed in close proximity to the label containing the other required information. Where only one end of a cloth label is sewn to the product in such a manner that both sides of the label are readily accessible to the prospective purchaser, the required fiber content information may appear on the reverse side of the label if the front side of such label clearly and conspicuously shows the wording "Fiber Content on Reverse Side." On

products as to which sectional disclosure is used, an additional nondeceptive label may be used showing the complete fiber content information as to a particular section or area of the product.

(c) Subject to the provisions of § 303.17 of this part, if non-required information or representations are placed on the label or elsewhere on the product, such nonrequired information or representation shall be set forth separate and apart from the required information and shall not interfere with, minimize, detract from, or conflict with such required information, nor shall such non-required information in any way be false or deceptive as to fiber content.

(d) Non-deceptive terms which are properly and truthfully descriptive of a fiber may be used in conjunction with the generic name of such fiber; as for example: "100 percent cross-linked rayon," "100 percent solution dyed acetate," "100 percent combed cotton," "100 percent nylon 66," etc.

[24 FR 4480, June 2, 1959, as amended at 25 FR 4317, May 14, 1960; 30 FR 14254, Nov. 13, 1965; 30 FR 15313, Dec. 11, 1965; 50 FR 15107, Apr. 17, 1985]

§ 303.17 Use of fiber trademarks and generic names on labels.

(a) A non-deceptive fiber trademark may be used on a label in conjunction with the generic name of the fiber to which it relates. Where such a trademark is placed on a label in conjunction with the required information, the generic name of the fiber must appear in immediate conjunction therewith, and such trademark and generic name must appear in type or lettering of equal size and conspicuousness.

(b) Where a generic name or a fiber trademark is used on any label, whether required or non-required, a full and complete fiber content disclosure shall be made in accordance with the Act and regulations the first time the generic name or fiber trademark appears on the label.

(c) If a fiber trademark is not used in the required information, but is used elsewhere on the label as non-required information, the generic name

of the fiber shall accompany the fiber trademark in legible and conspicuous type or lettering the first time the trademark is used.

(d) No fiber trademark or generic name shall be used in non-required information on a label in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate directly or indirectly that a textile fiber product is composed wholly or in part of a particular fiber, when such is not the case.

§ 303.18 Terms implying fibers not present.

Words, coined words, symbols or depictions, (a) which constitute or imply the name or designation of a fiber which is not present in the product, (b) which are phonetically similar to the name or designation of such a fiber, or (c) which are only a slight variation of spelling from the name or designation of such a fiber shall not be used in such a manner as to represent or imply that such fiber is present in the product.

[30 FR 13693, Oct. 28, 1965]

§ 303.19 Name or other identification required to appear on labels.

(a) The name required by the Act to be used on labels shall be the name under which the person is doing business. Where a person has a word trademark, used as a house mark, registered in the United States Patent Office, such word trademark may be used on labels in lieu of the name otherwise required: *Provided*, The owner of such word trademark furnishes the Commission a copy of the registration prior to its use. No trademark, trade names, or other names except those provided for above shall be used for required identification purposes.

(b) Registered identification numbers, as provided for in § 303.20 of this

part, may be used for identification purposes in lieu of the required name.

§ 303.20 Registered identification numbers.

(a) Registered numbers for use as the required identification in lieu of the name on textile fiber product labels, as provided in section 4(b)(3) of the Act, will be issued by the Commission to qualified persons residing in the United States upon receipt of an application duly executed in the form set out in paragraph (d) of this section.

(b)(1) Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable.

(2) Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest.

(c) Registered identification numbers assigned under this section may be used on labels required in labeling products subject to the provisions of the Wool Products Labeling Act and Fur Products Labeling Act, and numbers previously assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

(d) Form of application for registered identification number (printed forms are available upon request at the offices of the Commission):

APPLICATION FOR A REGISTERED IDENTIFICATION NUMBER

Approved by OMB
3064-0038
Expires 11/1/84

1. LEGAL NAME OF APPLICANT FIRM

2. NAME UNDER WHICH APPLICANT DOES BUSINESS IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY

☐ PROPRIETORSHIP☐ PARTNERSHIP☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (include Zip Code)

5. TYPE OF BUSINESS (Put an 'X' in all the boxes that apply)

☐ MANUFACTURING☐ IMPORTING☐ WHOLESALE☐ OTHER (Please specify)

6. LIST PRODUCTS

7. CERTIFICATION

The products listed in item six (6) above are subject to one or more of the following Acts: The Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k), The Wool Products Labeling Act (15 U.S.C. §§ 68-68i), or the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). By filing this form with the Federal Trade Commission the company named above applies for a registered identification number to use on labels required by these Acts.

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PARTNER, OR CORPORATE OFFICIAL

8. NAME (Please print or type)

9. TITLE

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, The Wool Products Labeling Act, or the Fur Products Labeling Act provide that any marketer or manufacturer of fibrous or fur products covered by those Acts may apply for a registered identification number. Companies can then use the registered identification number, instead of the name under which the Company does business, on the labels, tags, tickets, or stamps that those Acts require to be attached to covered products.

In completing this application, please observe the following:

- (a) All blanks must be filled in. Include your Zip Code in item 4.
(b) In item 7 if the applicant firm is a partnership, a principal partner should sign; if a corporation, one of its principal officers should sign, giving his/her title in item 9.

- (c) Send one completed copy to:
Federal Trade Commission
Los Angeles Regional Office
11000 Wilshire Blvd., Suite 13209
Los Angeles, CA 90024

A registered identification number (RIN) issued by the Commission continues in effect until revoked. The holder of the assigned number must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the holder's principal office and place of business must also be promptly reported.

§ 303.21 Marking of samples, swatches, or specimens and products sold therefrom.

(a) Where samples, swatches, or specimens of textile fiber products subject to the Act are used to promote or effect sales of such textile fiber products, the samples, swatches, or specimens, as well as the products themselves, shall be labeled to show their respective fiber contents and other required information: *Provided*, That such samples, swatches or specimens need not be labeled:

(1) If the samples, swatches, or specimens are less than two square inches in area and the information otherwise required to appear on the label is clearly, conspicuously, and non-deceptively disclosed on accompanying promotional matter in accordance with the Act and regulations;

(2) If the samples, swatches, or specimens are keyed to a catalogue to which reference is necessary in order to complete the sale of the textile fiber products, and which catalogue at the necessary point of reference clearly, conspicuously, and non-deceptively discloses the information otherwise required to appear on the label in accordance with the Act and regulations; or

(3) If such samples, swatches, or specimens are not used to effect sales to ultimate consumers and are not in the form intended for sale or delivery to, or for use by, the ultimate consumer, and are accompanied by an invoice or other paper showing the required information.

(b) Where properly labeled samples, swatches, or specimens are used to effect the sale of articles of wearing apparel or other household textile articles which are manufactured specifically for a particular customer after the sale is consummated, the articles of wearing apparel or other household textile articles need not be labeled if they are of the same fiber content as the samples, swatches, or specimens from which the sale was effected and an invoice or other paper accompanies them showing the information otherwise required to appear on the label.

§ 303.22 Products containing linings, interlinings, fillings, and paddings.

In disclosing the required information as to textile fiber products, the fiber content of any linings, interlinings, fillings, or paddings shall be set forth separately and distinctly if such linings, interlinings, fillings, or paddings are incorporated in the product for warmth rather than for structural purposes, or if any express or implied representations are made as to their fiber content. Examples are as follows:

100% Nylon
Interlining: 100% Rayon
Covering: 100% Rayon
Filling: 100% Cotton.

§ 303.23 Textile fiber products containing superimposed or added fibers.

Where a textile fiber product is made wholly of one fiber or a blend of fibers with the exception of an additional fiber in minor proportion superimposed or added in certain separate and distinct areas or sections for reinforcing or other useful purposes, the product may be designated according to the fiber content of the principal fiber or blend of fibers, with an exception naming the superimposed or added fiber, giving the percentage thereof in relation to the total fiber weight of the principal fiber or blend of fibers, and indicating the area or section which contains the superimposed or added fiber. Examples of this type of fiber content disclosure, as applied to products having reinforcing fibers added to a particular area or section, are as follows:

55% Cotton
45% Rayon
Except 5% Nylon added to toe and heel.
All Cotton except 1% Nylon added to neckband.

§ 303.24 Pile fabrics and products composed thereof.

The fiber content of pile fabrics or products composed thereof may be stated on the label in such segregated form as will show the fiber content of the face or pile and of the back or base, with percentages of the respective fibers as they exist in the face or pile and in the back or base: *Provided*,

That in such disclosure the respective percentages of the face and back be given in such manner as will show the ratio between the face and the back. Examples of the form of marking pile fabric as to fiber content provided for in this section are as follows:

100% Nylon Pile
 100% Cotton Back
 (Back constitutes 60% of fabric and pile 40%).
 Face—60% Rayon, 40% Nylon
 Back—70% Cotton, 30% Rayon
 (Face constitutes 60% of fabric and back 40%).

§ 303.25 Sectional disclosure of content.

(a) *Permissive.* Where a textile fiber product is composed of two or more sections which are of different fiber composition, the required information as to fiber content may be separated in the same label in such manner as to show the fiber composition of each section.

(b) *Mandatory.* The disclosure as above provided shall be made in all instances where such form of marking is necessary to avoid deception.

§ 303.26 Ornamentation.

(a)(1) Where the textile fiber product contains fiber ornamentation not exceeding five per centum of the total fiber weight of the product and the stated percentages of the fiber content are exclusive of such ornamentation, the label or any invoice used in lieu thereof shall contain a phrase or statement showing such fact; as for example:

60% Cotton
 40% Rayon
 Exclusive of Ornamentation;
 or
 All Cotton
 Exclusive of Ornamentation.

(2) The fiber content of such ornamentation may be disclosed where the percentage of the ornamentation in relation to the total fiber weight of the principal fiber or blend of fibers is shown; as for example:

70% Nylon
 30% Acetate
 Exclusive of 4% Metallic Ornamentation;
 or
 100% Rayon

Exclusive of 3% Silk Ornamentation.

(b) Where the fiber ornamentation exceeds five per centum, it shall be included in the statement of required percentages of fiber content.

(c) Where the ornamentation constitutes a distinct section of the product, sectional disclosure may be made in accordance with § 303.25 of this part.

§ 303.27 Use of the term "All" or "100%."

Where a textile fiber product or part thereof is comprised wholly of one fiber, other than any fiber ornamentation, decoration, elastic, or trimming as to which fiber content disclosure is not required, either the word "All" or the term "100%" may be used in labeling, together with the correct generic name of the fiber and any qualifying phrase, when required; as for example: "100% Cotton," "All Rayon, Exclusive of Ornamentation," "100% Acetate, Exclusive of Decoration," "All Nylon, Exclusive of Elastic," etc.

§ 303.28 Products contained in packages.

When textile products are marketed and delivered in a package which is intended to remain unbroken and intact until after delivery to the ultimate consumer, each textile product in the package, except hosiery, and the package shall be labeled with the required information. If the package is transparent to the extent it allows for a clear reading of the required information on the textile product, the package is not required to be labeled.

(50 FR 15107, Apr. 17, 1985)

§ 303.29 Labeling of pairs or products containing two or more units.

(a) Where a textile fiber product consists of two or more parts, units, or items of different fiber content, a separate label containing the required information shall be affixed to each of such parts, units or items showing the required information as to such part, unit, or item: *Provided*, That where such parts, units, or items are marketed or handled as a single product or ensemble and are sold and delivered to the ultimate consumer as a single product or ensemble, the required information may be set out on a single

label in such a manner as to separately show the fiber composition of each part, unit, or item.

(b) Where garments, wearing apparel, or other textile fiber products are marketed or handled in pairs or ensembles of the same fiber content, only one unit of the pair or ensemble need be labeled with the required information when sold and delivered to the ultimate consumer.

[24 FR 4480, June 2, 1959, as amended at 25 FR 4318, May 14, 1960]

§ 303.30 Textile fiber products in form for consumer.

A textile fiber product shall be considered to be in the form intended for sale or delivery to, or for use by, the ultimate consumer when the manufacturing or processing of the textile fiber product is substantially complete. The fact that minor or insignificant details of the manufacturing or processing have not been completed shall not excuse the labeling of such products as to the required information. For example, a garment must be labeled even though such matters as the finishing of a hem or cuff or the affixing of buttons thereto remain to be completed.

§ 303.31 Invoice in lieu of label.

Where a textile fiber product is not in the form intended for sale, delivery to, or for use by the ultimate consumer, an invoice or other paper may be used in lieu of a label, and such invoice or other paper shall show, in addition to the name and address of the person issuing the invoice or other paper, the fiber content of such product as provided in the Act and regulations as well as any other required information.

§ 303.32 Products containing reused stuffing.

Any upholstered product, mattress, or cushion which contains stuffing which has been previously used as stuffing in any other upholstered product, mattress, or cushion shall have securely attached thereto a substantial tag or label, at least 2 inches by 3 inches in size, and statements thereon conspicuously stamped or printed in the English language and in

plain type not less than 1/4 inch high, indicating that the stuffing therein is composed in whole or in part of "reused stuffing," "secondhand stuffing," "previously used stuffing," or "used stuffing."

§ 303.33 Country where imported textile fiber products are processed or manufactured.

(a) In addition to the other information required by the Act and Regulations:

(1) Each imported textile fiber product shall be labeled with the name of the country where such imported product was processed or manufactured;

(2) Each textile fiber product completely made in the United States of materials that were made in the United States shall be labeled using the term "Made in U.S.A." or some other clear and equivalent term.

(3) Each textile fiber product made in the United States, either in whole or part, of imported materials shall contain a label disclosing these facts; for example:

"Made in USA of imported fabric"

or

"Knitted in USA of imported yarn" and

(4) Each textile product partially manufactured in a foreign country and partially manufactured in the United States shall contain on the label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

"Imported cloth, finished in USA",

or

"Sewn in USA of imported components",

or

"Made in (foreign country), finished in USA"

(ii) When the U.S. Customs Service requires an origin label on the unfinished product, the manufacturing processes as required in paragraph (a)(4)(i) of this section or the name of the foreign country required by Customs, for example:

"Made in (foreign country)"

(b) For the purpose of determining whether a product should be marked under paragraphs (a) (2), (3), or (4) of this section, a manufacturer needs to consider the origin of only those materials that are covered under the Act and that are one step removed from that manufacturing process. For example, a yarn manufacturer must identify fiber if it is imported; a cloth manufacturer must identify imported cloth or imported yarn for household products made directly from yarn, or imported fiber used as filling for warmth.

(c) The term country means the political entity known as a nation. Except for the United States, colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries, and the name thereof shall be deemed acceptable in designating the country where the textile fiber product was processed or manufactured unless the Commission shall otherwise direct.

(d) The country where the imported textile fiber product was principally made shall be considered to be the country where such textile fiber product was processed or manufactured. Further work or material added to the textile fiber product in another country must effect a basic change in form in order to render such other country the place where such textile fiber product was processed or manufactured.

(e) The English name of the country where the imported textile fiber product was processed or manufactured shall be used. The adjectival form of the name of the country will be accepted as the name of the country where the textile fiber product was processed or manufactured, provided the adjectival form of the name does not appear with such other words as to refer to a kind or species of product. Variant spellings which clearly indicate the English name of the country, such as Brazil for Brazil and Italie for Italy, are acceptable. Abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain," are acceptable.

(f) Nothing in this rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

[24 FR 4480, June 2, 1959, as amended at 50 FR 15107, Apr. 17, 1985]

§ 303.34 Country of origin in mail order advertising.

When a textile fiber product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised.

[50 FR 15107, Apr. 17, 1985]

§ 303.35 Use of terms "virgin" or "new."

The terms "virgin" or "new" as descriptive of a textile fiber product, or any fiber or part thereof, shall not be used when the product or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, bonded, or similarly manufactured product.

§ 303.36 Form of separate guaranty.

(a) The following are suggested forms of separate guaranties under section 10 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other paper relating to the marketing or handling of any textile fiber products listed and designated therein, and showing the date of such invoice or other paper and the signature and address of the guarantor.

(1) *General form.* We guarantee that the textile fiber products specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder.

(2) *Guaranty based on guaranty.* Based upon a guaranty received, we guarantee that the textile fiber products specified

herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder.

NOTE: The printed name and address on the invoice or other paper will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of a textile fiber product on a label or on an invoice or other paper relating to its marketing or handling shall not be considered a form of separate guaranty.

§ 303.37 Form of continuing guaranty from seller to buyer.

Under section 19 of the Act, a seller residing in the United States may give a buyer a continuing guaranty to be applicable to all textile fiber products sold or to be sold. The following is the prescribed form of continuing guaranty from seller to buyer.

We, the undersigned, guaranty that all textile fiber products now being sold or which may hereafter be sold or delivered to — are not, and will not be misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder. This guaranty effective until —.

Dated, signed, and certified this — day of —, 19—, at — (City), — (State or Territory) — (name under which business is conducted.)

Under penalty of perjury, I certify that the information supplied in this form is true and correct.

Signature of Proprietor, Principal Partner, or Corporate Official

Name (Print or Type) Title

[48 FR 12518, Mar. 25, 1983]

§ 303.38 Continuing guaranty filed with Federal Trade Commission.

(a)(1) Under section 10 of the act any person residing in the United States and marketing or handling textile fiber products may file a continuing guaranty with the Federal Trade Commission. When filed with the Commission a continuing guaranty shall be fully executed in duplicate. Forms for use in preparing continuing guaranties will be supplied by the Commission upon request.

(2) Continuing guaranties filed with the Commission shall continue in effect until revoked. The guarantor shall promptly report any change in business status to the Commission.

(b) Prescribed form of continuing guaranty:

CONTINUING GUARANTY

Approved by OMB
1081-0036
Expires 11/1/84

1. LEGAL NAME OF GUARANTOR FIRM

2. NAME UNDER WHICH GUARANTOR FIRM DOES BUSINESS, IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY

☐ PROPRIETORSHIP☐ PARTNERSHIP☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (Include Zip Code)

5. LAW UNDER WHICH THE CONTINUING GUARANTY IS TO BE FILED. Put an "X" in the appropriate box(es):

☐ Under the Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k). The company named above, which manufactures, markets, or handles textile fiber products, guarantees that when it ships or delivers any textile fiber product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Textile Fiber Products Identification Act and the rules and regulations under that Act.

☐ Under the Wool Products Labeling Act (15 U.S.C. §§ 68-68j). The company named above, which manufactures, markets, or handles wool products, guarantees that when it ships or delivers any wool product, the product will not be misbranded within the meaning of the Wool Products Labeling Act and the rules and regulations under that Act.

☐ Under the Fur Products Labeling Act (15 U.S.C. §§ 69-69k). The company named above, which manufactures, markets, or handles fur products, guarantees that when it ships or delivers any fur product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Fur Products Labeling Act and the rules and regulations under that Act.

6. CERTIFICATION

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PRINCIPAL PARTNER, OR CORPORATE OFFICIAL

7. NAME (Please print or type)

8. TITLE

9. CITY AND STATE WHERE SIGNED

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any marketer or manufacturer of fabrics or fur products of furs covered by those Acts may file a continuing guaranty with the Federal Trade Commission. A continuing guaranty, on file, assures customer firms that the guarantor's products are in conformance with the Acts under which the guarantor has filed. Customer firms rely on the continuing guaranties for protection from liability if violations occur.

11. Send two completed copies to:

Federal Trade Commission
Los Angeles Regional Office
1100 Wilshire Blvd., Suite 1320
Los Angeles, CA 90024

Continuing guaranties filed with the Commission continue in effect until revoked. The guarantor must immediately notify the Los Angeles Regional Office in writing of any change in business status. Any change in the address of the guarantor's principal office or place of business must also be promptly reported.

In completing this form, please observe the following:

(a) All appropriate blanks on the form should be filled in. Include your Zip Code in item 4.

(b) In item 6, if the guarantor firm is a partnership, a principal partner should sign; if a corporation, one of its principal officers should sign, giving his/her title in item 8.

DO NOT USE THIS SPACE

Filed _____ /9 _____

FEDERAL TRADE COMMISSION

FPC Form 31-A (Rev. 1-78)

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product guaranteed the following:

Continuing guaranty under the Textile Fiber Products Identification Act filed with the Federal Trade Commission.

(d) Any person who falsely represents in writing that he has a continuing guaranty on file with the Federal Trade Commission when such is not a fact shall be deemed to have furnished a false guaranty under section 10(b) of the Act.

[24 FR 4486, June 2, 1959, as amended at 48 FR 12517, Mar. 25, 1983]

§ 303.39 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a textile fiber product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain written records showing the fiber content as required by the Act of all such textile fiber products made by such manufacturer.

The records so maintained shall show:

(1) The percentage of each fiber placed in each style, lot, or description, as applicable to the textile fiber products of such manufacturer in the form of a fiber, yarn, fabric, or other form; and

(2) Such numbers, information, marks, or descriptions as will identify the said records with the respective textile fiber products to which they relate.

Manufacturers shall also keep and maintain as records under the Act all purchase and sales invoices, purchase and sales contracts, labels, manufacturing contracts, orders, or duplicate copies thereof; and factory records, business correspondence, and other pertinent documents and data applicable to the purchase, receipt, use, and disposition of all raw stocks, fiber, yarn, fabric, or other manufactured materials obtained by the manufacturer.

(b) Any person substituting a stamp, tag, label, or other identification pur-

suant to section 5(b) of the Act shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received.

(c) The records required to be maintained pursuant to the provisions of this rule shall be preserved for at least three years.

§ 303.40 Use of terms in written advertisements which imply presence of a fiber

The use of terms in written advertisements which are descriptive of a method of manufacture, construction, or weave, and which by custom and usage are also indicative of a textile fiber or fibers, or the use of terms in such advertisements which constitute or connote the name or presence of a fiber or fibers, shall be deemed to be an implication of fiber content under section 4(c) of the Act, except that the provisions of this section shall not be applicable to non-deceptive shelf or display signs in retail stores indicating the location of textile fiber products and not intended as advertisements.

§ 303.41 Use of fiber trademarks and generic names in advertising.

(a) In advertising textile fiber products, the use of a fiber trademark shall require a full disclosure of the fiber content information required by the Act and regulations in at least one instance in the advertisement.

(b) Where a fiber trademark is used in advertising textile fiber products containing more than one fiber, other than permissible ornamentation, such fiber trademark and the generic name of the fiber must appear in the required fiber content information in immediate proximity and conjunction with each other in plainly legible type or lettering of equal size and conspicuousness.

(c) Where a fiber trademark is used in advertising textile fiber products containing only one fiber, other than permissible ornamentation, such fiber trademark and the generic name of the fiber must appear in immediate proximity and conjunction with each other in plainly legible and conspicu-

ous type or lettering at least once in the advertisement.

(d) Where a fiber trademark or generic name is used in non-required information in advertising, such fiber trademark or generic name, shall not be used in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate, directly or indirectly, that a textile fiber product is composed wholly or in part of a particular fiber, when such is not the case.

§ 303.42 Arrangement of information in advertising textile fiber products.

(a) Where a textile fiber product is advertised in such manner as to require disclosure of the information required by the Act and regulations, all parts of the required information shall be stated in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence. In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount 5 per centum or more of the total fiber weight of the product together with any fibers disclosed in accordance with paragraph (b) of § 303.3 of this part (Rule 3) shall appear in order of predominance by weight, to be followed by the designation "other fiber" or "other fibers" if a fiber or fibers required to be so designated be present.

(b) Non-required information or representations shall in no way be false, deceptive, or misleading as to fiber content and shall not include any names, terms, or representations prohibited by the Act and regulations. Such non-required information or representations shall not be set forth or so used as to interfere with, minimize, or detract from the required information.

(c) Non-deceptive terms which are properly and truthfully descriptive of a fiber may be used in conjunction with the generic name of such fiber; as for example: "cross-linked rayon," "solution dyed acetate," "combed cotton," "nylon 66," etc.

[24 FR 4480, June 2, 1959, as amended at 30 FR 14254, Nov. 13, 1965; 30 FR 15313, Dec. 11, 1965]

§ 303.43 Fiber content tolerances.

(a) A textile fiber product which contains more than one fiber shall not be deemed to be misbranded as to fiber content percentages if the percentages by weight of any fibers present in the total fiber content of the product, exclusive of permissive ornamentation, do not deviate or vary from the percentages stated on the label in excess of 3 percent of the total fiber weight of the product. For example, where the label indicates that a particular fiber is present in the amount of 40 percent, the amount of such fiber present may vary from a minimum of 37 percent of the total fiber weight of such product to a maximum of 43 percent of the total fiber weight of such product.

(b) Where the percentage of any fiber or fibers contained in a textile fiber product deviates or varies from the percentage stated on the label by more than the tolerance or variation provided in paragraph (a) of this section, such product shall be misbranded unless the person charged proves that the entire deviation or variation from the fiber content percentages stated on the label resulted from unavoidable variations in manufacture and despite the exercise of due care.

(c) Where representations are made to the effect that a textile fiber product is composed wholly of one fiber, the tolerance provided in section 4(b)(2) of the Act and paragraph (a) of this section shall not apply, except as to permissive ornamentation where the textile fiber product is represented to be composed of one fiber "exclusive of ornamentation."

§ 303.44 Products not intended for uses subject to the act.

Textile fiber products intended for uses not within the scope of the Act and regulations or intended for uses in other textile fiber products which are exempted or excluded from the Act shall not be subject to the labeling and invoicing requirements of the Act and regulations: *Provided*, An invoice or other paper covering the marketing or handling of such products is given, which indicates that the products are not intended for uses subject to the

Textile Fiber Products Identification Act.

§ 303.45 Exclusions from the act.

(a) Pursuant to section 12(b) of the Act, the Commission hereby excludes from the operation of the Act:

- (1) All textile fiber products except:
- (i) Articles of wearing apparel;
- (ii) Handkerchiefs;
- (iii) Scarfs;
- (iv) Beddings;
- (v) Curtains and casements;
- (vi) Draperies;
- (vii) Tablecloths, napkins, and doilies;
- (viii) Floor coverings;
- (ix) Towels;
- (x) Wash cloths and dish cloths;
- (xi) Ironing board covers and pads;
- (xii) Umbrellas and parasols;
- (xiii) Batts;
- (xiv) Products subject to section 4(h) of the Act;
- (xv) Flags with heading or more than 216 square inches in size;
- (xvi) Cushions;
- (xvii) All fibers, yarns and fabrics (including narrow fabrics except packaging ribbons);
- (xviii) Furniture slip covers and other covers or coverlets for furniture;
- (xix) Afghans and throws;
- (xx) Sleeping bags;
- (xxi) Antimaccassars and ties;
- (xxii) Hammocks;
- (xxiii) Dresser and other furniture scarfs.

(2) Belts, suspenders, arm bands, permanently knotted neckties, garters, sanitary belts, diaper liners, labels (either required or non-required) individually and in rolls, looper clips intended for handicraft purposes, book cloth, artists' canvases, tapestry cloth, and shoe laces.

(3) All textile fiber products manufactured by the operators of company stores and offered for sale and sold exclusively to their own employees as ultimate consumers.

(4) Coated fabrics and those portions of textile fiber products made of coated fabrics.

(5) Secondhand household textile articles which are discernibly secondhand or which are marked to indicate their secondhand character.

(6) Non-woven products of a disposable nature intended for one-time use only.

(7) All curtains, casements, draperies, and table place mats, or any portions thereof otherwise subject to the Act, made principally of slats, rods, or strips, composed of wood, metal, plastic, or leather.

(8) All textile fiber products in a form ready for the ultimate consumer procured by the military services of the United States which are bought according to specifications, but shall not include those textile fiber products sold and distributed through post exchanges, sales commissaries, or ship stores; provided, however, that if the military services sell textile fiber products for nongovernmental purposes the information with respect to the fiber content of such products shall be furnished to the purchaser thereof who shall label such products in conformity with the Act and regulations before such products are distributed for civilian use.

(9) All hand woven rugs made by Navajo Indians which have attached thereto the "Certificate of Genuineness" supplied by the Indian Arts and Crafts Board of the United States Department of Interior. The term "Navajo Indian" means any Indian who is listed on the register of the Navajo Indian Tribe or is eligible for listing thereon.

(b) The exclusions provided for in paragraph (a) of this section shall not be applicable (1) if any representations as to the fiber content of such products are made on any label or in any advertisement without making a full and complete fiber content disclosure on such label or in such advertisement in accordance with the Act and regulations with the exception of those products excluded by paragraph (a)(6) of this section, or (2) if any false, deceptive, or misleading representations are made as to the fiber content of such products.

(c) The exclusions from the Act provided in paragraph (a) of this section are in addition to the exemptions from the Act provided in section 12(a) of the Act and shall not affect or limit such exemptions.

(Sec. 12, 72 Stat. 1723; 15 U.S.C. 70j)

[24 FR 4480, June 2, 1959, as amended at 25 FR 4318, May 14, 1960; 25 FR 7044, July 26, 1960; 29 FR 48, Jan. 3, 1964]

PART 304—RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

Sec.

304.1 Terms defined.

304.2 General requirements.

304.3 Applicability.

304.4 Application of other law and regulations.

304.5 Marking requirements for imitation political items.

304.6 Marking requirements for imitation numismatic items.

AUTHORITY: 15 U.S.C. 2101 et seq.

SOURCE: 40 FR 5496, Feb. 6, 1975, unless otherwise noted.

§ 304.1 Terms defined.

(a) "Act" means the Hobby Protection Act (approved November 29, 1973; Pub. L. 93-167, 87 Stat. 686, (15 U.S.C. 2101 et seq.)).

(b) "Commerce" has the same meanings as such term has under the Federal Trade Commission Act.

(c) "Commission" means the Federal Trade Commission.

(d) "Imitation numismatic item" means an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item. Such term includes an original numismatic item which has been altered or modified in such a manner that it could reasonably purport to be an original numismatic item other than the one which was altered or modified. The term shall not include any re-issue or re-strike of any original numismatic item by the United States or any foreign government.

(e) "Imitation political item" means an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy or counterfeit of an original item.

(f) "Original numismatic item" means anything which has been a part of a coinage or issue which has been used in exchange or has been used to commemorate a person, object, place, or event. Such term includes coins,

tokens, paper money, and commemorative medals.

(g) "Original political item" means any political button, poster, literature, sticker, or any advertisement produced for use in any political cause.

(h) "Person" means any individual, group, association, partnership, or any other business entity.

(i) "Regulations" means any or all regulations prescribed by the Federal Trade Commission pursuant to the Act.

(j) "United States" means the States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 304.2 General requirement.

Imitation political or numismatic items subject to the Act shall be marked in conformity with the requirements of the Act and the regulations promulgated thereunder. Any violation of these regulations shall constitute a violation of the Act and of the Federal Trade Commission Act.

§ 304.3 Applicability.

Any person engaged in the manufacturing, or importation into the United States for introduction into or distribution in commerce, of imitation political or imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder.

§ 304.4 Application of other law or regulation.

The provisions of these regulations are in addition to, and not in substitution for or limitation of, the provisions of any other law or regulation of the United States (including the existing statutes and regulations prohibiting the reproduction of genuine currency) or of the law or regulation of any State.

§ 304.5 Marking requirements for imitation political items.

(a) An imitation political item which is manufactured in the United States, or imported into the United States for introduction into or distribution in commerce, shall be plainly and permanently marked with the calendar year in which such item was manufactured.

(b) The calendar year shall be marked upon the item legibly, conspicuously and nondeceptively, and in accordance with the further requirements of these regulations.

(1) The calendar year shall appear in arabic numerals, shall be based upon the Gregorian calendar and shall consist of four digits.

(2) The calendar year shall be marked on either the obverse or the reverse surface of the item. It shall not be marked on the edge of the item.

(3) An imitation political item of incusable material shall be incused with the calendar year in sans-serif numerals. Each numeral shall have a vertical dimension of not less than two millimeters (2.0 mm) and a minimum depth of three-tenths of one millimeter (0.3 mm) or one-half ($\frac{1}{2}$) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension for the four numerals composing the calendar year shall be six millimeters (6.0 mm).

(4) An imitation political button, poster, literature, sticker, or advertisement composed of nonincusable material shall be imprinted with the calendar year in sans-serif numerals. Each numeral shall have a vertical dimension of not less than two millimeters (2.0 mm). The minimum total horizontal dimension of the four numerals composing the calendar year shall be six millimeters (6.0 mm).

§ 304.6 Marking requirements for imitation numismatic items.

(a) An imitation numismatic item which is manufactured in the United States, or imported into the United States for introduction into or distribution in commerce, shall be plainly and permanently marked "COPY".

(b) The word "COPY" shall be marked upon the item legibly, conspicuously, and nondeceptively, and in accordance with the further requirements of these regulations.

(1) The word "COPY" shall appear in capital letters, in the English language.

(2) The word "COPY" shall be marked on either the obverse or the reverse surface of the item. It shall not be marked on the edge of the item.

(3) An imitation numismatic item of incusable material shall be incused with the word "COPY" in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) and a minimum depth of three-tenths of one millimeter (0.3 mm) or to one-half ($\frac{1}{2}$) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm).

(4) An imitation numismatic item composed of nonincusable material shall be imprinted with the word "COPY" in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm). The minimum total horizontal dimension of the word "COPY" shall be six millimeters (6.0 mm).

PART 305—RULES FOR USING ENERGY COSTS AND CONSUMPTION INFORMATION USED IN LABELING AND ADVERTISING FOR CONSUMER APPLIANCES UNDER THE ENERGY POLICY AND CONSERVATION ACT

SCOPE

Sec.

- 305.1 Scope of the regulations in this part.
- 305.2 Definitions.
- 305.3 Description of covered products to which this part applies.

GENERAL

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- 305.5 Determinations of estimated annual energy cost and energy efficiency rating.
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REPRESENTATIVE AVERAGE UNIT ENERGY COSTS

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305.17 Effect on other law.

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APPENDICES

APPENDIX A1—REFRIGERATORS

APPENDIX A2—REFRIGERATORS—FREEZERS

APPENDIX B—FREEZERS

APPENDIX C—DISHWASHERS

APPENDIX D1—WATER HEATER—GAS

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APPENDIX E—ROOM AIR CONDITIONERS

APPENDIX F—CLOTHES WASHERS

APPENDIX G—FURNACES

APPENDIX H—SUGGESTED DATA REPORTING FORMAT

AUTHORITY: Sec. 324, Energy Policy and Conservation Act, (Pub. L. 94-163, (42 U.S.C. 6294)); as amended by the National Energy Conservation Policy Act (Pub. L. 95-619), unless otherwise noted.

SOURCE: 44 FR 66475, Nov. 19, 1979, unless otherwise noted.

SCOPE

§ 305.1 Scope of the regulations in this part.

The rule in this part establishes requirements for consumer appliance products, as hereinafter described, in commerce, as "commerce" is defined in the Energy Policy and Conservation Act, 42 U.S.C. 6291, with respect to:

(a) Labeling the products with information indicating their estimated annual energy costs or energy efficiency ratings, and related information;

(b) Including in printed matter displayed or distributed at the point of sale of such products, or including in any catalog from which the products may be purchased, information concerning their energy consumption.

(c) Including on the labels, separately attaching to the products, or shipping with the products, additional information relating to energy consumption, energy efficiency, or energy cost; and

(d) Making representations, in writing or in broadcast advertising, re-

specting the energy consumption, energy efficiency, or the cost of energy consumed by consumer appliance products.

DEFINITIONS

§ 305.2 Definitions.

(a) "Act" means the Energy Policy and Conservation Act (Pub. L. 94-163), and amendments thereto.

(b) "Commission" means the Federal Trade Commission.

(c) "Manufacturer" means any person who manufactures, produces, assembles, or imports a consumer appliance product. Assembly operations which are solely decorative are not included.

(d) "Retailer" means a person to whom a consumer appliance product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale. The term "retailer" includes purchasers of appliances who install such appliances in newly constructed or newly rehabilitated housing, or mobile homes, with the intent to sell the covered appliances as part of the sale of such housing or mobile homes.

(e) "Distributor" means a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce.

(f) "Private labeler" means an owner of a brand or trademark on the label of a consumer appliance product which bears a private label.

(g) "Range of comparability" means a group of models within a class of covered products, each model of which satisfies approximately the same consumer needs.

(h) "Estimated annual operating cost" or "estimated annual energy cost" means the aggregate retail cost of the energy which is likely to be consumed annually in representative use of a consumer product, determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) "Energy efficiency rating" means the "annual fuel utilization efficiency" for furnaces, and "energy efficiency ratio" for room air conditioners, deter-

mined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(j) "Range of estimated annual operating costs" or "range of estimated annual energy costs" means the range of estimated annual operating costs of all models within a designated range of comparability.

(k) "Range of energy efficiency ratings" means the range of energy efficiency ratings for all models within a designated range of comparability.

(l) "New covered product," as used in § 305.4, means a covered product the title of which has not passed to a purchaser who buys the product for purposes other than resale or leasing for a period in excess of one year.

(m) "Catalog" means printed material which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.

(n) "Consumer appliance product" means any appliance product for which the Secretary of the Department of Energy has prescribed final test procedures pursuant to Section 323 of the Act (42 U.S.C. 6293).

(o) "Covered Product" means any consumer appliance product defined in § 305.3 of the rule which is, or may be, used for personal use or consumption by individuals.

§ 305.3 Description of covered products to which this part applies.

(a) Refrigerators and refrigerator-freezers.

(1) "Electric refrigerator" means a cabinet designed for refrigerated storage of food at temperatures above 32° F and having a source of refrigeration requiring an electrical energy input only. It may include a compartment for the freezing and storage of food at temperatures below 32° F but does not provide a separate low-temperature compartment designed for the freezing of and long-term storage of food at temperatures below 8° F. It has only one exterior door, but it may have interior doors or compartments.

(2) "Electric refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of foods at

temperatures above 32° F and with at least one of the compartments designed for the freezing of and the storage of frozen foods at temperatures of 8° F or below and which may be capable of adjustment by the user to a temperature of 0° F or below. The source of refrigeration requires an electrical energy input only.

(b) "Freezer" means a cabinet designed as a unit for the storage of food at temperatures of 0° F or below and which has the ability to freeze food. The source of refrigeration requires an electric energy input only.

(c) "Dishwasher" means a cabinet-like appliance which, with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils and most cooking utensils by chemical, mechanical, and/or electrical means and discharges to the plumbing drainage system.

(d) "Water heater" means an automatically controlled, thermally insulated vessel designed for heating water and storing heated water. It is designed to produce hot water at a temperature of less than 180° F.

(1) "Electric water heater" means a water heater which utilizes electricity as the energy source for heating the water, which has a manufacturer's specified energy input rating of 12 kilowatts or less at a voltage no greater than 250 volts, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 120 gallons.

(2) "Gas water heater" means a water heater which utilizes gas as the energy source for heating the water, which has a manufacturer's specified energy input rating of 75,000 Btus per hour or less, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 100 gallons.

(3) "Oil water heater" means a water heater which utilizes oil as the energy source for heating the water, which has a manufacturer's specified energy input rating of 103,875 Btus per hour or less, and which has a manufacturer's specified storage capacity of 50 gallons or less.

(e) "Room air conditioner" means an encased assembly designed as a unit

for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and/or heating.

(f) "Clothes washer" means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement.

(1) "Automatic clothes washer" means a class of clothes washer which has a control system capable of scheduling a preselected combination of operations, such as regulation of water fill level, and performance of wash, rinse, drain and spin functions, without the need for the user to intervene subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves.

(2) "Semi-automatic clothes washer" means a class of clothes washer that is the same as an automatic clothes washer except that the user must intervene to regulate the water temperature by adjusting the external water faucet valves.

(3) "Other clothes washer" means a class of clothes washer which is not an automatic or semi-automatic clothes washer.

(g) "Furnace" means a device designed to be the principal heating source for the living space of a residence and having a heat input rate of less than 300,000 Btus per hour for boilers and less than 225,000 Btus per hour for furnaces.

(1) "Forced air central furnace" means a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The heat generated by combustion of gas or oil is transferred to the air within a casing by conduction through heat exchange surfaces and is circulated through the duct system by means of a fan or blower.

(2) "Gravity central furnace" means a gas-fueled furnace which depends

primarily on natural convection for circulation of heated air and which is designed to be used in conjunction with a system of ducts.

(3) "Electric central furnace" means a furnace designed to supply heat through a system of ducts with air as the heating medium, and in which heat is generated by one or more electric resistance heating elements, and the heated air is circulated by means of a fan or blower.

(4) "Direct vent system" means a system supplied by a manufacturer which provides outdoor air directly to a furnace for combustion and draft relief if the unit is so equipped.

(5) "Electric boiler" means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250° F water temperature.

(6) "Low pressure steam or hot water boiler" means a gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250° F water temperature.

GENERAL

§ 305.4 Prohibited acts.

(a) It shall be unlawful and subject to the enforcement penalties of Section 333 of the Act of a maximum civil penalty of \$100 for each unit of any new covered product to which this part applies:

(1) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product unless such covered product is labeled in accordance with § 305.11 with a label, flap tag, hang tag, or energy fact sheet which conforms to the provisions of the Act and this part.

(2) For any manufacturer, distributor, retailer, or private labeler knowingly to remove or render illegible any label required to be provided with such product by this part.

(3) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product, if there is not included (i) on the label, (ii) separately attached to the product, c. (iii) shipped with the product, additional information relating to energy consumption or energy efficiency which conforms to the requirements in this part.

(b) It shall be unlawful and subject to the enforcement penalties of section 333 of the Act of a maximum civil penalty of \$100 per day for any manufacturer or private labeler knowingly to:

(1) Refuse a request by the Commission or its designated representative for access to, or copying of, records required to be supplied under this part.

(2) Refuse to make reports or provide upon requests by the Commission or its designated representative any information required to be supplied under this part.

(3) Refuse upon request by the Commission or its designated representative to permit a representative designated by the Commission to observe any testing required by this part while such testing is being conducted or to inspect the results of such testing. This section shall not limit the Commission from requiring additional testing under this part.

(4) Refuse, when requested by the Commission or its designated representative, to supply at the manufacturer's expense, no more than two of each model of each covered product to any laboratory designated by the Commission for the purpose of ascertaining whether the information in catalogs or set out on the label as required by this part is accurate. This action will be taken only after review of a manufacturer's testing records and an opportunity to revalidate test data has been extended to the manufacturer.

(5) Distribute in commerce any catalog containing a listing for a covered product without the information required by § 305.14 of this part. This subsection shall also apply to distributors and retailers.

(c) Pursuant to section 333(c) of the Act, it shall be an unfair or deceptive act or practice in violation of Section

5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any manufacturer, distributor, retailer or private labeler in or affecting commerce to display or distribute at point of sale any printed material applicable to a covered product under this rule if such printed material does not contain the information required by § 305.13. This requirement does not apply to any broadcast advertisement or to any advertisement in a newspaper, magazine, or other periodical.

(d) Effective 180 days after a test procedure applicable to a consumer appliance product is prescribed by the Secretary of the Department of Energy, pursuant to section 323 of the Act (42 U.S.C. 6293), it shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any manufacturer, distributor, retailer, or private labeler to make any representation in or affecting commerce—

(1) In writing (including a representation on a label), or

(2) In any broadcast advertisement, respecting the energy consumption of the product or cost of energy consumed by the product, unless the product has been tested in accordance with the test procedure and the representation fairly discloses the results of the testing. This requirement is not limited to consumer appliance products covered by the labeling requirements in this part.

Any manufacturer, distributor, retailer, or private labeler may file a petition with the Commission not later than sixty (60) days before the expiration of the period involved for an extension of the 180-day period. If the Commission finds that the requirements would impose an undue hardship on the petitioner, the Commission may extend the 180 day period with respect to the petitioner up to an additional 180 days.

(e) This part shall not apply to:

(1) Any covered product if it is manufactured, imported, sold, or held for sale for export from the United States, so long as such product is not in fact distributed in commerce for use in the United States, and such covered prod-

uct or the container thereof bears a stamp or label stating that such covered product is intended for export.

(2) Any covered product if the manufacture of the product was completed prior to May 19, 1980.

(3) Any catalog or point of sale printed matter distributed prior to May 19, 1980 except that if representations respecting the energy consumption or energy efficiency of any covered product or other consumer appliance product or cost of energy consumed by such product are included, they are subject to the requirements of paragraph (d) of this section.

(f) As used in paragraphs (a) and (b) of this section, the term "knowingly" means:

(1) The having of actual knowledge, or

(2) The presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

[44 FR 66475, Nov. 19, 1979; 44 FR 68819, Nov. 30, 1979]

TESTING

§ 305.5 Determinations of estimated annual energy cost and energy efficiency rating.

Procedures for determining the estimated annual energy costs and energy efficiency ratings of covered products are those found in 10 CFR Part 430, Subpart B, in the following sections:

(a) Refrigerators and refrigerator-freezers—§ 430.22(a).

(b) Freezers—§ 430.22(b).

(c) Dishwashers—§ 430.22(c).

(d) Water heaters—§ 430.22(d).

(e) Room air conditioners—§ 430.22(f).

(f) Clothes washers—§ 430.22(j).

(g) Furnaces—§ 430.22(n).

§ 305.6 Sampling.

Any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.23 of 10 CFR Part 430, Subpart B.

§ 305.7 Determinations of capacity.

The capacity of covered products shall be determined as follows:

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the net refrigerated volume in cubic feet, rounded to the nearest one-tenth of a cubic foot, determined according to 3.2 of Appendix A1 to 10 CFR Part 430, Subpart B.

(b) *Freezers.* The capacity shall be the net freezer refrigerated volume in cubic feet, rounded to the nearest one-tenth of a cubic foot, determined according to 3.2 of Appendix B to 10 CFR Part 430, Subpart B.

(c) *Dishwashers.* The capacity shall be the place-setting capacity, calculated in conformance with AHAM Specification DW-1.

(d) *Water heaters.* The capacity shall be the first hour rating, determined according to 4.8 of Appendix E to CFR Part 430, Subpart B.

(e) *Room air conditioners.* The capacity shall be the cooling capacity in Btu's per hour, determined according to 4.1 of Appendix F to 10 CFR Part 430, Subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the value of EER used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

(f) *Clothes washers.* The size shall be the tub capacity, rounded to the nearest gallon, determined according to 3.1 of Appendix J to 10 CFR Part 430, Subpart B, in the terms standard or compact as defined in Appendix J of this rule. The factor used to convert cubic feet to gallons shall be eight (8) gallons per cubic foot.

(g) *Furnaces.* The capacity shall be the heating capacity in Btu's per hour, rounded to the nearest 1,000 Btu's per hour, determined according to 4.7 or 4.10 of Appendix N to 10 CFR Part 430, Subpart B.

§ 305.8 Submission of data.

(a) Each manufacturer of a covered product shall submit to the Commission, not later than January 21, 1980, a

report listing the estimated annual energy cost for refrigerators, refrigeration freezers, freezers, dishwashers, water heaters, and clothes washers (or the energy efficiency rating (for room air conditioners and furnaces) for each basic model); current production, determined according to § 305.5 and statistically verified according to § 305.6. The report also must list, for each basic model in current production, the model numbers for each basic model; the total energy consumption determined in accordance with § 305.5, used to calculate the estimated annual energy cost or the energy efficiency rating; the number of tests performed; and its capacity, determined in accordance with § 305.7. For the those models which use more than one energy source or more than one cycle, each separate amount of energy consumption, or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix H illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted by July 21, 1980.

(b) Thereafter, all data required by § 305.8(a) except serial numbers, shall be submitted to the Commission annually on or before the following dates:

Category	Deadline for data submission	Effective mandatory labeling date
Refrigerators, Refrigerated freezers, and Freezers	Aug. 1	Dec. 1
Dishwashers	June 1	Oct. 1
Water heaters	May 1	Sept. 1
Room Air Conditioners	May 1	Sept. 1
Clothes Washers	Mar. 1	July 1
Furnaces	May 1	Sept. 1

All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report. Serial number reports for new covered products are due sixty days after the annual effective mandatory labeling date for each product.

(c) All information required by paragraph (a) of this section must be submitted for new models prior to any dis-

tribution of such model. Models subject to design or retrofit alterations which change the data contained in any annual report shall be reported in the manner required for new models. Models which are discontinued shall be reported in the next annual report.

REPRESENTATIVE AVERAGE UNIT ENERGY COSTS

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1. REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1985)

Type of energy	Common units	As required by DOE test procedure	DOE's unit conversion factor
Electricity	1 kilowatt-hour	\$0.0714/kWh	\$0.0714
Natural gas	BTU (therm) or \$1.00 MCF	\$0.000061/Btu	\$0.0714
No. 2 heating oil	\$1.11/gallon	\$0.0000060/Btu	\$0.00
Propane	\$2.00/gallon	\$0.0000079/Btu	\$0.00

1 Btu stands for British thermal unit.

1 kWh stands for kilowatt hour.

1 kWh = 3,412 Btu's.

* 1 therm = 100,000 Btu's.

MCF stands for 1,000 cubic feet.

** For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.

For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.

For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

(b) Table 1, of this section, will be revised on the basis of future information provided by the Secretary of the Department of Energy but not more often than annually. Manufacturers shall use the revised information when submission of the annual data is made in accordance with § 305.8.

(Sec. 324, Energy Policy and Conservation Act, (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), 42 U.S.C. 6294, sec. 553, Administrative procedure Act, 5 U.S.C. 553)

(44 FR 66475, Nov. 19, 1979, as amended at 50 FR 12786, Apr. 1, 1985)

§ 305.10 Ranges of estimated annual energy costs and energy efficiency ratings.

(a) The range of estimated annual energy costs or range of energy efficiency ratings for each covered product shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the products. The Commission shall publish revised ranges annually in the FEDERAL REGISTER if appropriate, or a statement that specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy cost or the energy efficiency rating of the products within the range changes in a way that would alter the upper or lower cost or efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 30 days following the publication of any revision shall conform to the revised range. Products which have been labeled prior to the effective date of a modification under this section need not be relabeled.

(b) When the estimated annual energy cost or energy efficiency rating of a given model of a covered product falls outside the limits of the range found in the current appendix for that product, which could result from the introduction of a new or changed model, the manufacturer shall (1) omit placement of such product on the scale, and (2) add a sentence in the space just below the scale as follows:

The energy cost of this model was not available at the time the range was published; or

The energy efficiency rating of this model was not available at the time the range was published.

REQUIRED DISCLOSURES

§ 305.11 Labeling for covered products.

(a) *Labels*—(1) *Layout*. All energy labels for each category of covered products use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size for all labels is 5 $\frac{1}{2}$ " x 7". Copy is to be set x 27 picas or x 29

picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely Figure 1, the prototype label appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype label.

(2) *Type size and setting*. The Helvetica series typeface or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 1, 2 and 3). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototype closely. Generally, text may be set flush left or right, line for line, or justified with one point leading except where otherwise indicated. Helvetica medium shall be used for all copy with the following exceptions only: (i) Numerals indicating "highest" and "lowest" energy cost or energy efficiency rating; (ii) chart headings and, if applicable, energy cost graph headings; (iii) the line, "How much will this model cost you to run yearly?"

(3) *Colors*. The basic colors of all labels shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow with a window dropped out (showing as white) over the table(s) displaying yearly cost. The window shall flush left and right, top and bottom with the table rules. All type including chart or table rules shall be print process black.

(4) *Paper stock*—(i) *Adhesive labels*. All adhesive labels should be applied so they can be easily removed without use of tools or liquids, other than water. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25" x 38") or equivalent, exclusive of the release liner and adhesive. The adhesive shall have a minimum peel adhesion capacity of 24 ounces per inch width. The pressure-sensitive adhesive shall be applied in not less than two strips not less than 0.5 inches wide. The strips shall be within 0.25 inches of the opposite edges of the label. For a "flap-tag" label, the pressure-sensitive adhe-

sive shall be applied in one strip not less than 0.5 inches wide. The strip shall be within 0.25 inches of the top edge of the label.

(ii) *Hang tags.* The paper stock for hang tags shall have a basic weight of not less than 110 pounds per 500 sheets (25½ - 30½ index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(5) *Contents—(i) Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners.* (A) Headlines and texts, as illustrated in Figures 1 and 2, are standard for all labels. At the option of the manufacturer or private labeler, the appropriate year may be inserted in that portion of the label which discloses the national average unit utility rate upon which the cost estimates are based.

(B) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(C) Model number(s) will be the designation given by the manufacturer or private labeler.

(D) Capacity or size is that determined in accordance with § 305.7.

(E) Estimated annual energy cost for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers and water heaters is that determined in accordance with § 305.5. Energy efficiency rating for room air conditioners is that determined in accordance with § 305.5.

(F) Ranges of comparability and of estimated annual energy costs or energy efficiency ratings, as applicable, are found in Section 1 of the ap-

propriate appendices accompanying this part.

(G) Placement of the labeled product on the scale shall be proportionate to the costs of the lowest and highest costs or efficiency ratings forming the scale.

(H) Yearly cost text and tables are found in section 2 of the appropriate appendices accompanying this part. Cost figures are to be determined in accordance with § 305.5 for the unit energy costs found in section 2 of the appropriate appendices. Revised appendices will be published by the Commission whenever necessary. Use the unit energy cost figures in the latest published appendices to determine the cost figures to be used for a particular covered product.

(I) The following statement shall appear at the bottom of the label.

Important

Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

(J) A statement that the energy costs or energy efficiency ratings, as applicable, are based on U.S. Government standard tests is required on all labels, as indicated in Figures 1 and 2.

(K) No marks or information other than that specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6-point type or smaller.

(ii) *Labels for furnaces.* (A) The headline, as illustrated in Figure 3, is standard for all labels.

(B) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(C) The following statements shall appear on the label, as indicated in Figure 3:

"You can save substantially on home heating and cooling energy costs by following the simple steps outlined below:

1. Weatherproof your house.
2. Assure energy efficient heating and cooling equipment selection and installation.
3. Operate and maintain your system to conserve energy.

Help conserve energy. Compare the energy efficiency rating and cost information for this model with others. Check the figures and spend less on energy. Your contractor has the energy fact sheets. Ask for them."

(D) The following statement shall appear at the bottom of the label:

"Important

Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)."

(E) No marks or information other than specified in this part shall appear on or directly adjoining this label except for a part or publication number identification, as desired by the manufacturer. The identification number shall be in the lower right-hand corner of the label, and characters shall be in 6-point type or smaller.

(6) *Placement.* Manufacturers shall affix a label to the exterior surface on covered products in such a position that it can be easily read while standing in front of the product as it is displayed for sale. The label should be generally located on the upper-right-front corner of the product, except that for low-standing products or products with configurations that make application in that location impractical, some other prominent location may be used. The top of the label should not exceed 74 inches from the base of taller products. The label in the form of a "flap-tag" shall be adhered to the top of the appliance and bent (folded at 90°) to hang over the front, if this can be done with assurance that it will be readily visible.

(7) *Use of hang tags.* Information prescribed above for labels may be displayed in the form of a hang tag, which may be used in place of an affixed label. If a hang tag is used, it shall be affixed in such a position that

it will be prominent to a consumer examining the product.

(b) *Fact sheets—(1) Distribution.* (i) Manufacturers and private labelers must give distributors and retailers, including assemblers, fact sheets for the furnaces they sell to them. Distributors must give the fact sheets to the retailers, including assemblers, they supply. Each fact sheet must contain the information listed in § 305.11(b)(3).

(ii) Retailers, including assemblers, who sell furnaces to consumers must have fact sheets for the furnaces they sell. They must make the fact sheets available to their customers. The fact sheets may be made available to customers in any manner, as long as customers are likely to notice them. For example, they can be available in a display, where customers can take copies of them. They can be kept in a binder at a counter or service desk, with a sign telling customers where the fact sheets are. Retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business must show the fact sheets to their customers and let them read the fact sheets before they agree to purchase the product.

(2) *Format.* All information required to be contained in fact sheets must be disclosed clearly and conspicuously.

(3) *Contents.* (i) "Energy Guide" headline is standard for all fact sheets, as for labels.

(ii) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(iii) Model number(s) will be the designation given by the manufacturer or private labeler.

(iv) Capacity or size is that determined in accordance with § 305.7.

(v) Energy efficiency rating is that determined in accordance with § 305.5.

(vi) Ranges of comparability and of energy efficiency ratings are found in Section 1 of the appropriate appendices accompanying this part.

(vii) Placement of the labeled product on the scale shall be proportionate to energy efficiency ratings of the lowest and highest efficiency ratings forming the scale.

(viii) Early cost information text and tables are found in section 2 of Appendix G accompanying this part. Cost figures are to be determined in accordance with § 305.5 for the unit energy costs found in section 2 of Appendix G. A revised appendix will be published by the Commission whenever necessary. Use the unit energy cost figures in the latest published Appendix G to determine the cost figures to be used for furnaces.

(ix) A statement that the energy costs and energy efficiency ratings are based on U.S. Government standard tests is required in all fact sheets.

[44 FR 66475, Nov. 19, 1979; 44 FR 75133, Dec. 19, 1979]

§ 305.12 Additional information relating to energy consumption.

Additional information relating to energy consumption which must be included on labels, separately attached to the product, or shipped with the product will be published as a separate section 3 of the appendices accompanying this part. No additional information will be required without public notice and an opportunity for written comments.

§ 305.13 Promotional material displayed or distributed at point of sale.

(a) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product shall clearly and conspicuously include in such printed material the following required disclosure:

"Before purchasing this appliance, read important energy cost and efficiency information available from your retailer."

(b) This section shall not apply to:

- (1) Written warranties.
- (2) Use and care manuals, installation instructions, or other printed material containing primarily post-purchase information for the purchaser.
- (3) Printed material containing only the identification of a covered prod-

uct, pricing information and/or non-energy related representations concerning that product.

(4) Any printed material distributed prior to the effective date listed in § 305.18(f).

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer or private labeler who advertises a covered product in a catalog, from which it may be purchased by cash, charge account or credit terms, shall include in such catalog, on each page which lists a covered product, the following information required to be disclosed on the label:

(1) The capacity of the model.

(2) The estimated annual energy cost for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers and water heaters. The representative average unit costs for electricity, natural gas, oil and propane gas, published in § 305.9, which are current at the closing date for printing or the printing deadline date of the catalog, shall be used to compute the estimated annual energy cost.

(3) The energy efficiency ratings for room air conditioners and furnaces.

(4) The range of estimated annual energy costs or energy efficiency ratings, which shall be those which are current at the closing date for printing or the printing deadline date of the catalog.

(5) The following disclosure, appearing clearly and conspicuously:

"Important energy information is available. Turn to page(s) [insert designated page number(s)]."

(b) On the page(s) designated, as referred to in § 305.14(a)(5), the manufacturer, distributor, retailer or private labeler must disclose either instructions on how cost grid information, described in §§ 305.11(a)(5)(i)(H) and 305.11(b)(3)(viii), may be obtained from the cataloger, or the cost grid information itself, so long as all information thereon is clearly legible. Information contained in a catalog for a covered product shall be changed or modified in accordance with § 305.10.

ADDITIONAL REQUIREMENTS

§ 305.15 Test data records.

(a) Test data shall be kept on file by the manufacturer of a covered product for a period of two years after production of that model has been terminated.

(b) Upon notification by the Commission or its designated representative, a manufacturer or private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the estimated annual energy cost or energy efficiency rating for each basic model was derived.

§ 305.16 Required testing by designated laboratory.

Upon notification by the Commission or its designated representative, a manufacturer of a covered product shall supply, at the manufacturer's expense, no more than two of each model of each product to a laboratory, which will be identified by the Commission or its designated representative in the notice, for the purpose of ascertaining whether the estimated annual energy cost or energy efficiency rating disclosed on the label or fact sheet, or as required by § 305.14, is accurate. Such a procedure will only be followed after the Commission or its staff has examined the underlying test data provided by the manufacturer as required by § 305.15(b) and after the manufacturer has been afforded the opportunity to reverify test results from which the estimated annual energy cost or energy efficiency rating for each basic model was derived. A representative designated by the Commission shall be permitted to observe any reverification procedures required by this part, and to inspect the results of such reverification. Charges for testing by designated laboratories will be paid by the Commission.

EFFECT OF THIS PART

§ 305.17 Effect on other law.

This regulation supersedes any State regulation to the extent required by section 327 of the Act. Pursuant to the Act, all State regulations that require the disclosure for any covered product

of information with respect to energy consumption, other than the information required to be disclosed in accordance with this part, are superseded.

§ 305.18 When the rules take effect.

(a) The report required by § 305.8(a), listing serial numbers or other numbers identifying the date of manufacture of models in current production, must be received by the Commission no later than July 21, 1980.

(b) The first required annual report of model numbers, test results and other data, referred to in § 305.8(a), must be received by the Commission no later than January 21, 1980.

(c) The requirement that the labels, flap tags, or hang tags specified in this rule must be attached to new covered products takes effect for all new covered products on which manufacture is completed on or after May 19, 1980.

(d) The requirement that energy fact sheets specified in this rule must be provided takes effect for furnaces on which manufacture is completed on or after May 19, 1980.

(e) The requirement that specified information about covered products be disclosed in catalogs takes effect for all catalogs printed and distributed on or after May 19, 1980. This requirement does not apply to catalogs if the catalog issue was distributed before May 19, 1980. Required revisions to the specified information must be made in all new editions and new catalogs printed and distributed after the date of the revision.

(f) The requirement that all printed material displayed or distributed at the point of sale disclose information specified in § 305.13 takes effect on May 19, 1980.

(g) The preemption provision in § 305.17 takes effect on November 19, 1979.

(h) All other requirements of this rule except those in § 305.4(d) take effect on May 19, 1980.

§ 305.19 Stayed or invalid parts.

If any section or portion of a section of this part is stayed or held invalid, the remainder of the part will not be affected.

APPENDICES

AUTHORITY: Sec. 324, Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6294 (1975)), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619, 42 U.S.C. 6291 (1978)), and sec. 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedure), unless otherwise noted.

APPENDIX A-1—REFRIGERATORS

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	\$18	\$34
2.5 to 4.4	22	42
4.5 to 6.4	30	42
6.5 to 8.4	30	31
8.5 to 10.4	30	49
10.5 to 12.4	25	54
12.5 to 14.4	34	56
14.5 to 16.4	(¹)	(¹)
16.5 and over	72	72

¹ No data submitted.

[48 FR 13974, Apr. 1, 1983]

APPENDIX A-2—REFRIGERATOR—FREEZERS

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	\$32	\$52
10.5 to 12.4	42	81
12.5 to 14.4	42	121
14.5 to 16.4	45	125
16.5 to 18.4	61	120
18.5 to 20.4	75	124
20.5 to 22.4	80	121
22.5 to 24.4	85	129
24.5 to 26.4	107	148
26.5 to 28.4	127	128
28.5 and over	(¹)	(¹)

¹ No data submitted.

[48 FR 13974, Apr. 1, 1983]

APPENDIX B—FREEZERS

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	\$18	\$46
5.5 to 7.4	23	41
7.5 to 9.4	34	50
9.5 to 11.4	34	56
11.5 to 13.4	35	68
13.5 to 15.4	48	98

APPENDIX B—FREEZERS—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
15.5 to 17.4	52	103
17.5 to 19.4	57	103
19.5 to 21.4	59	114
21.5 to 23.4	67	148
23.5 to 25.4	72	79
25.5 to 27.4	71	88
27.5 to 29.4	87	87
29.5 and over	114	162

[48 FR 13974, Apr. 1, 1983]

APPENDIX C—DISHWASHERS

RANGES OF ESTIMATED YEARLY ENERGY COSTS

Ranges of comparability	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	(¹)	(¹)	(¹)	(¹)
Standard	\$54.00	\$90.00	\$27.00	\$52.00

¹ No data submitted.

[48 FR 52292, Nov. 17, 1983]

Appendix D1—WATER HEATER—GAS

First hour rating	Ranges of estimated yearly energy cost			
	Natural Gas		Propane	
	Low	High	Low	High
Less than 21	(¹)	(¹)	(¹)	(¹)
21 to 24	(¹)	(¹)	(¹)	(¹)
25 to 29	(¹)	(¹)	(¹)	(¹)
30 to 34	(¹)	(¹)	(¹)	(¹)
35 to 40	\$186.00	\$219.00	(¹)	(¹)
41 to 47	187.00	202.00	\$258.00	\$284.00
48 to 55	176.00	266.00	243.00	368.00
55 to 64	188.00	295.00	260.00	407.00
65 to 74	185.00	273.00	255.00	377.00
75 to 86	170.00	288.00	236.00	397.00
87 to 99	210.00	243.00	290.00	335.00
100 to 114	219.00	304.00	301.00	419.00
115 to 131	254.00	266.00	351.00	368.00
Over 131	254.00	266.00	351.00	397.00

(¹) No data submitted.

[48 FR 40883, Sept. 12, 1983]

APPENDIX D2—WATER HEATER—ELECTRIC

First hour rating	Ranges of estimated yearly energy cost	
	Low	High
Less than 21	(¹)	(¹)
21 to 24	\$414.00	\$443.00
25 to 29	469.00	469.00
30 to 34	414.00	469.00
35 to 40	410.00	513.00
41 to 47	402.00	513.00
48 to 55	406.00	526.00
55 to 64	406.00	519.00
65 to 74	410.00	549.00
75 to 86	419.00	573.00
87 to 99	414.00	557.00
100 to 114	419.00	628.00
115 to 131	448.00	573.00
Over 131	(¹)	(¹)

(¹) No data submitted

[48 FR 40883, Sept. 12, 1983]

APPENDIX E—ROOM AIR CONDITIONERS—
Continued

Manufacturers rated cooling capacity in BTU's/hr	Ranges of energy efficiency ratings	
	Low	High
12,800 to 13,299	5.8	7.0
13,300 to 13,799	7.2	9.7
13,800 to 14,299	6.0	9.9
14,300 to 14,799	6.3	8.4
14,800 to 15,299	5.5	8.6
15,300 to 15,799	5.7	7.5
15,800 to 16,499	5.9	8.5
16,500 to 17,499	7.5	8.7
17,500 to 18,499	5.8	9.2
18,500 to 19,499	7.9	9.3
19,500 to 20,499	6.4	7.8
20,500 to 21,499	6.7	8.2
21,500 to 22,499	6.5	8.6
22,500 to 24,499	5.9	9.0
24,500 to 26,499	7.5	8.2
26,500 to 28,499	6.0	8.2
28,500 to 32,499	5.8	8.3
32,500 to 36,000	6.6	7.2

(¹) No data submitted

APPENDIX D3—WATER HEATER—OIL

[Ranges of estimated yearly energy cost]

First hour rating	Low	High
Less than 65	(¹)	(¹)
65 to 74	(¹)	(¹)
75 to 86	(¹)	(¹)
87 to 99	(¹)	(¹)
100 to 114	(295.00)	(295.00)
115 to 131	(288.00)	(309.00)
Over 131	(¹)	(¹)

(¹) No data submitted

[48 FR 55841, Dec. 16, 1983]

[49 FR 43048, Oct. 26, 1984]

APPENDIX F—CLOTHES WASHERS

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	\$43.00	\$97.00	\$15.00	\$41.00
Standard	37.00	150.00	19.00	62.00

[48 FR 23384, Mar. 25, 1983]

APPENDIX E—ROOM AIR CONDITIONERS

Manufacturers rated cooling capacity in BTU's/hr	Ranges of energy efficiency ratings	
	Low	High
Less than 4,000	(¹)	(¹)
4,000 to 4,299	5.1	7.5
4,300 to 4,799	5.5	7.5
4,800 to 5,299	5.6	8.7
5,300 to 5,799	6.3	9.0
5,800 to 6,299	6.4	9.5
6,300 to 6,799	8.5	9.0
6,800 to 7,299	5.8	10.1
7,300 to 7,799	5.4	9.0
7,800 to 8,299	5.7	9.8
8,300 to 8,799	6.5	9.4
8,800 to 9,299	5.6	11.0
9,300 to 9,799	6.1	10.9
9,800 to 10,299	6.1	11.5
10,300 to 10,799	7.2	9.1
10,800 to 11,299	6.0	8.8
11,300 to 11,799	6.0	9.0
11,800 to 12,299	5.1	9.5
12,300 to 12,799	7.6	9.6

APPENDIX G1—FURNACES—GAS

Comparability (Btu per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(¹)	(¹)
11,000 to 16,000	(¹)	(¹)
17,000 to 25,000	68.30	70.58
26,000 to 42,000	55.00	82.00
43,000 to 59,000	51.40	81.19
60,000 to 76,000	54.00	86.20
77,000 to 93,000	55.00	85.90
94,000 to 110,000	54.00	84.70
111,000 to 127,000	54.00	85.70
128,000 to 144,000	57.60	85.30
145,000 to 161,000	63.37	84.60
162,000 to 178,000	63.73	78.78
179,000 to 195,000	63.79	83.00
196,000 and over	63.92	82.00

(¹) No data submitted

[45 FR 20636, Apr. 17, 1980]

APPENDIX G2—FURNACES—ELECTRIC

Comparability (BTU per hour)	Ranges of energy efficiency ratings.	
	Low	High
5,000 to 10,000	100.00	100.00
11,000 to 16,000	100.00	100.00
17,000 to 25,000	99.60	100.00
26,000 to 42,000	99.20	100.00
43,000 to 59,000	96.60	100.00
60,000 to 76,000	96.50	100.00
77,000 to 93,000	98.30	100.00
94,000 to 110,000	99.20	100.00
111,000 to 127,000	100.00	100.00
128,000 to 144,000	100.00	100.00
145,000 to 161,000	(¹)	(¹)
162,000 to 178,000	100.00	100.00
179,000 to 195,000	100.00	100.00
196,000 and over	100.00	100.00

¹ No data submitted.

[45 FR 20636, Apr. 17, 1980]

APPENDIX G3—FURNACES—OIL

Comparability (Btu per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(¹)	(¹)
11,000 to 16,000	(¹)	(¹)
17,000 to 25,000	(¹)	(¹)
26,000 to 42,000	(¹)	(¹)
43,000 to 59,000	71.00	87.10
60,000 to 76,000	67.10	87.96
77,000 to 93,000	66.80	87.29
94,000 to 110,000	65.90	86.36
111,000 to 127,000	66.00	85.96
128,000 to 144,000	68.00	85.31
145,000 to 161,000	62.00	84.40
162,000 to 178,000	73.40	83.30
179,000 to 195,000	71.93	85.39
196,000 and over	74.30	85.39

¹ No data submitted.

[45 FR 26036, Apr. 17, 1980]

Appendix H - Suggested Data Reporting Format

1. Date of Report
2. Company Name
3. City
4. State
5. Product
6. Energy Type (gas, oil, etc.)
7. Model Number
8. Estimated Annual Energy Cost
or Energy Efficiency Rating
9. Capacity
10. Number of Tests Performed
11. Total Energy Consumption (based on
all tests performed)

195

195

BEST COPY AVAILABLE

All copy Helvetica medium or bold

All copy x 27 picas

10 12 Helv Water Heater-Oil (Name of Corporation)
Model(s) RP23, RP38

ENERGYGUIDE

8 9 Helv Estimates on the scale are based on a national average oil rate of 62¢ per gallon. Only models with first hour ratings of 75 to 86 gallons are used in the scale.

10 12 Helv Model with lowest energy cost

12 Helv Bold ▶ **\$127**

6 Helv ▶ **\$134** ← 80 Numeral

▶ **THIS MODEL**

▶ Model with highest energy cost **\$159**

▶ **Estimated yearly energy cost.** ← 12 rule

▶ **Your cost will vary depending on your local energy rate and how you use the product.** This energy cost is based on U.S. Government standard tests.

12 Helv Bold ▶ **How much will this model cost you to run yearly?**

18 Helv ▶ **Yearly cost** ← 6 rule

6 Helv Bold ▶ **Estimated yearly & cost shown below** ← 12 rule

▶ Cost per gallon	52¢	\$137
	56¢	\$145
	60¢	\$153
	64¢	\$161
	68¢	\$169
	72¢	\$177

10 14 Helv ← 6 rule

10 11 Helv ▶ **Ask your salesperson or local utility for the energy rate (cost per gallon) in your area.** ← 6 rule

14 15 Helv ▶ **Important** Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302). ← 8 9 Helv

(Part No. 381029) ← 6 Helv

SAMPLE LABEL

Figure 1

All Copy Helvetica medium or bold

All Copy x 29 picas

10 1/2 Helv
Clothes Washer
Capacity Compact
(Name of Corporation)
Model(s) SL301, SL309

5 9 Helv
ENERGYGUIDE
Estimates on the scale are based on a national average electric rate of 4.97¢ per kilowatt-hour and a natural gas rate of 36.7¢ per therm. Only compact size clothes washers are used in the scale.

8 Helv Bold
Electric Water Heater
Gas Water Heater

8 9 Helv
Model with lowest energy cost \$22
Model with highest energy cost \$67
THIS MODEL \$58
Estimated yearly energy cost

10 Helv Bold
Model with lowest energy cost \$20
Model with highest energy cost \$24
THIS MODEL \$22
Estimated yearly energy cost

12 Helv Bold
Your cost will vary depending on your local energy rate and how you use the product. This energy cost is based on U.S. Government standard tests.

8 9 Helv Bold
How much will this model cost you to run yearly?

12 Helv numerals
with an electric water heater

Loads of clothes per week	2	4	6	8	12	
Estimated yearly \$ cost shown below						
Cost per kilowatt-hour	2¢	\$7	\$14	\$21	\$29	\$42
	4¢	\$14	\$29	\$43	\$57	\$85
	6¢	\$21	\$43	\$64	\$86	\$129
	8¢	\$29	\$57	\$86	\$114	\$172
	10¢	\$36	\$71	\$107	\$143	\$214
	12¢	\$43	\$85	\$128	\$172	\$256

8 9 Helv and Helv Bold
with a gas water heater

Loads of clothes per week	2	4	6	8	12	
Estimated yearly \$ cost shown below						
Cost per therm (100 cubic feet)	10¢	\$2	\$4	\$6	\$8	\$12
	20¢	\$4	\$8	\$12	\$16	\$24
	30¢	\$6	\$11	\$17	\$22	\$34
	40¢	\$8	\$15	\$23	\$30	\$46
	50¢	\$10	\$19	\$29	\$48	\$58
	60¢	\$12	\$22	\$34	\$44	\$68

10 11 Helv
Ask your salesperson or local utility for the energy rate (cost per kilowatt-hour or therm) in your area, and for estimated costs if you have a propane or oil water heater.

14 Helv
Important Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302).

6 Helv
(Part No. 8399501)

SAMPLE LABEL

Figure 2

All copy Helvetica medium or bold

All Copy x 27 picas

10/12 Helv → (For Furnaces)

ENERGYGUIDE

12/13 Helv → You can save substantially on home heating and cooling energy costs by following the simple steps outlined below:

10/11 Helv with 18 numerals → 1. Weatherproof your house

→ 2. Assure energy efficient heating and cooling equipment selection and installation

→ 3. Operate and maintain your system to conserve energy

12/13 Helv → Help conserve energy. Compare the energy efficiency rating and cost information for this model with others. Check the figures and spend less on energy.

12 Helv Bold → **Your contractor has the energy fact sheets. Ask for them.**

14/15 Helv
8/9 Helv → **Important** Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302)

SAMPLE LABEL

Figure 3

Refrigerator-Freezer
Capacity 23 Cubic Feet

(Name of Corporation)
Model(s) AH503, AH504, AH507
Type of Defrost Full Automatic

ENERGYGUIDE

Estimates on the scale are based on a national average electric rate of 4.9¢ per kilowatt hour.

Only models with 22.5 to 24.4 cubic feet are compared in the scale.

Model with
lowest
energy cost
\$68

\$91

Model with
highest
energy cost
\$132

THIS MODEL

Estimated yearly energy cost

Your cost will vary depending on your local energy rate and how you use the product. This energy scale is based on U.S. Government standards.

How much will this model cost you to run yearly?

		Yearly cost
		Estimated yearly \$ cost shown below
Cost per kilowatt hour	2c	\$44
	4c	\$88
	6c	\$132
	8c	\$176
	10c	\$220
	12c	\$264

Ask your salesperson or local utility for the energy rate (cost per kilowatt hour) in your area.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302).

SAMPLE LABEL

(Part No. 47502)

Freezer
Capacity 26 Cubic Feet

(Name of Corporation)
Model(s) SH405, SH413
Type of Defrost Manual

ENERGYGUIDE

Estimates on the scale are based on a national average electric rate of 4.9¢ per kilowatt hour

Only models with 25.5 to 27.4 cubic feet are compared in the scale

Model with
lowest
energy cost
\$95

\$120

Model with
highest
energy cost
\$140

THIS ▼ MODEL ▼

Estimated yearly energy cost.

Your cost will vary depending on your local energy rate and how you use the product. This energy cost is based on U.S. Government standard tests.

How much will this model cost you to run yearly?

		Yearly cost
		Estimated yearly \$ cost shown below
Cost per kilowatt hour	2¢	\$64
	4¢	\$128
	6¢	\$190
	8¢	\$252
	10¢	\$317
	12¢	\$380

Ask your salesperson or local utility for the energy rate (cost per kilowatt hour) in your area.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302)

SAMPLE LABEL

(Part No. 14332)

Dishwasher
Capacity Standard

(Name of Corporation)
Model(s) MR328, XL12, NA83

ENERGYGUIDE

Estimates on the scale are based on a national average electric rate of 4.9¢ per kilowatt hour and a natural gas rate of 35.7¢ per therm.

Only standard size dishwashers are used in the scale.

Electric Water Heater

Model with lowest energy cost
\$50

\$60

Model with highest energy cost
\$84

THIS MODEL
Estimated yearly energy cost

Gas Water Heater

Model with lowest energy cost
\$19

\$27

Model with highest energy cost
\$42

THIS MODEL
Estimated yearly energy cost

Your cost will vary depending on your local energy rate and how you use the product. This energy cost is based on U.S. Government standard tests.

How much will this model cost you to run yearly?

with an electric water heater

Loads of dishes per week		2	4	6	8	12
Estimated yearly \$ cost shown below						
Cost per kilowatt hour	2¢	\$8	\$15	\$23	\$31	\$47
	4¢	\$15	\$31	\$46	\$62	\$92
	6¢	\$23	\$46	\$69	\$92	\$139
	8¢	\$31	\$62	\$92	\$123	\$189
	10¢	\$39	\$77	\$116	\$154	\$231
	12¢	\$47	\$92	\$139	\$185	\$278

with a gas water heater

Loads of dishes per week		2	4	6	8	12
Estimated yearly \$ cost shown below						
Cost per therm (100 cubic feet)	10¢	\$2	\$5	\$7	\$9	\$14
	20¢	\$5	\$11	\$16	\$22	\$33
	30¢	\$7	\$14	\$21	\$27	\$41
	40¢	\$9	\$19	\$28	\$36	\$55
	50¢	\$12	\$23	\$35	\$45	\$68
	60¢	\$19	\$28	\$42	\$54	\$82

Ask your salesperson or local utility for the energy rate (cost per kilowatt hour or therm) in your area, and for estimated costs if you have a propane or oil water heater.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302).

SAMPLE LABEL

(Part No. 73906)

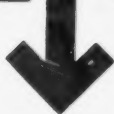
Clothes Washer
Capacity Compact

(Name of Corporation)
Model(s) SL301, SL309

ENERGYGUIDE

Estimates on the scale are based on a national average electric rate of 4.97¢ per kilowatt hour and a natural gas rate of 36.7¢ per therm.

Only compact size clothes washers are used in the scale.



Electric Water Heater

Model with lowest energy cost
\$22

\$58

Model with highest energy cost
\$67

THIS MODEL

Estimated yearly energy cost

Gas Water Heater

Model with lowest energy cost
\$20

\$22

Model with highest energy cost
\$24

THIS MODEL

Estimated yearly energy cost

Your cost will vary depending on your local energy rate and how you use the product. This energy cost is based on U.S. Government standard tests.

How much will this model cost you to run yearly?

with an electric water heater

Loads of clothes per week		2	4	6	8	12
Estimated yearly \$ cost shown below						
Cost per kilowatt hour	2¢	\$7	\$14	\$21	\$29	\$42
	4¢	\$14	\$29	\$43	\$57	\$85
	6¢	\$21	\$43	\$64	\$86	\$129
	8¢	\$29	\$57	\$86	\$114	\$172
	10¢	\$36	\$71	\$107	\$143	\$214
	12¢	\$43	\$85	\$128	\$172	\$256

with a gas water heater

Loads of clothes per week		2	4	6	8	12
Estimated yearly \$ cost shown below						
Cost per therm (100 cubic feet)	10¢	\$2	\$4	\$6	\$8	\$12
	20¢	\$4	\$8	\$12	\$16	\$24
	30¢	\$6	\$11	\$17	\$22	\$34
	40¢	\$8	\$15	\$23	\$30	\$46
	50¢	\$10	\$19	\$29	\$48	\$69
	60¢	\$12	\$22	\$34	\$44	\$66

Ask your salesperson or local utility for the energy rate (cost per kilowatt hour or therm) in your area, and for estimated costs if you have a propane or oil water heater.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302).

SAMPLE LABEL

(Part No. 8199601)

Room Air Conditioner
Capacity: 8,000 BTU/hr

(Name of Corporation)
Model(s) SA 714, SA 718

ENERGYGUIDE

Models with the most efficient
energy rating number use less
energy and cost less to operate

Models with 7800 to
8299 BTU's cool
about the same space.

7.3

Least efficient
model

3.4

Most efficient
model

8.5

THIS MODEL

Energy Efficiency Rating (EER)

This energy rating is based on U.S. Government standard tests

How much will this model cost you to run yearly?

Yearly hours of use		250	750	1000	2000	3000
		Estimated yearly \$ cost shown below				
Cost per kilowatt hour	2¢	\$7	\$20	\$28	\$56	\$84
	4¢	\$14	\$41	\$56	\$112	\$168
	6¢	\$20	\$61	\$80	\$160	\$240
	8¢	\$27	\$82	\$108	\$216	\$324
	10¢	\$34	\$102	\$136	\$272	\$408
	12¢	\$41	\$122	\$163	\$326	\$489

Ask your salesperson or local utility for the energy rate (cost per kilowatt hour) in your area. Your cost will vary depending on your local energy rate and how you use the product.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302)

SAMPLE LABEL

(Part No. 20648)

Water Heater-Oil

(Name of Corporation)

Model(s) RP23, RP38

ENERGYGUIDE

Estimates on the scale are based
on a national average oil
rate of 62¢ per gallon

Only models with first hour
ratings of 75 to 86 gallons
are used in the scale



Model with
lowest
energy cost
\$127

\$134

Model with
highest
energy cost
\$159

**THIS MODEL**

Estimated yearly energy cost

Your cost will vary depending on your local energy rate and how you use the product. This energy cost is based on U.S. Government standard tests.

How much will this model cost you to run yearly?

		Yearly cost
		Estimated yearly \$ cost shown below
Cost per gallon	52¢	\$137
	56¢	\$145
	60¢	\$153
	64¢	\$161
	68¢	\$169
	72¢	\$177

Ask your salesperson or local utility for the energy rate (cost per gallon) in your area.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302)

SAMPLE LABEL

(Part No. 361029)

(For Furnaces)

ENERGYGUIDE



You can save substantially on home heating and cooling energy costs by following the simple steps outlined below:

-
1. Weatherproof your house
 2. Assure energy efficient heating and cooling equipment selection and installation
 3. Operate and maintain your system to conserve energy.
-

Help conserve energy. Compare the energy efficiency rating and cost information for this model with others. Check the figures and spend less on energy.

Your contractor has the energy fact sheets. Ask for them.

Important Removal of this label before consumer purchase is a violation of federal law (42 U.S.C. 6302)

SAMPLE LABEL

PART 306—OCTANE POSTING AND CERTIFICATION

GENERAL

Sec.

- 306.0 What this rule does.
- 306.1 Who is covered.
- 306.2 Stayed or invalid parts.
- 306.3 Preemption.

DUTIES OF REFINERS, IMPORTERS, AND PRODUCERS

- 306.4 Octane rating.
- 306.5 Certification.
- 306.6 Recordkeeping.

DUTIES OF DISTRIBUTORS

- 306.7 Certification.
- 306.8 Recordkeeping.

DUTIES OF RETAILERS

- 306.9 Octane posting.
- 306.10 Recordkeeping.

LABEL SPECIFICATIONS

- 306.11 Labels.

AUTHORITY: Pub. L. 95-297, 92 Stat. 322 (15 U.S.C. 2801, et seq.)

SOURCE: 44 FR 19169, Mar. 30, 1979, unless otherwise noted.

GENERAL

§ 306.0 What this rule does.

This rule deals with the certification and posting of octane ratings in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act. It applies to persons, partnerships, and corporations. If you are covered by this regulation, breaking any of its rules is an unfair or deceptive act or practice under section 5 of that Act. You can be fined up to ten thousand dollars each time you break a rule.

§ 306.1 Who is covered.

You are covered by this rule if you are a refiner, importer, producer, distributor, or retailer of gasoline. Gasoline, in this rule, means automotive gasoline.

§ 306.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will stay in force.

§ 306.3 Preemption.

The Petroleum Marketing Practices Act (PMPA) is the law that instructs the FTC to enact this rule. Section 204 of PMPA provides:

To the extent that any provision of this title applies to any act or omission, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

DUTIES OF REFINERS, IMPORTERS AND PRODUCERS

§ 306.4 Octane rating.

(a) If you are a refiner, importer, or producer, you must determine the octane rating of all gasoline before you transfer it. You can do that yourself or through a testing lab.

(b)(1) To find the octane rating, add the research octane number and the motor octane number and divide by two, as explained by the American Society for Testing and Materials (ASTM) in ASTM D 439-78, entitled "Standard Specifications for Automotive Gasoline." To determine the research octane number, use ASTM standard test method D 2699-75, and to determine the motor octane number, use ASTM standard test method D 2700-75.

(2) If ASTM changes these standards, there will be a 30-day comment period, beginning after the Commission publishes the change in the FEDERAL REGISTER. During this time, Commission staff or any person affected by the change may petition the Commission not to adopt the change because it is a change in the procedures for determining octane ratings, or to extend the length of time of the grace period that follows the comment period. If, based on comments, the Commission decides to permit incorporation of the change into the rule, the change will become effective 60 days after expiration of the comment period, unless this period is extended by the Commission. If the Commission decides not to permit automatic incorporation,

formal procedures may be initiated to evaluate the change.

§ 306.5 Certification.

In each transfer you make to anyone who is not a consumer, you must certify the octane rating of the gasoline consistent with your determination. You can do this in either of two ways:

(a) Include a delivery ticket with each transfer of gasoline. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

- (1) Your name;
- (2) The name of the person to whom the gasoline is transferred;
- (3) The date of the transfer;
- (4) The octane rating. This may be rounded off to a whole or half number equal to or less than the number determined by you.

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the octane rating of any gasoline you will transfer to that person from the date of the letter onwards. The octane rating may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer gasoline with a lower octane rating. When this happens, you must certify the octane rating of the new gasoline, either with a delivery ticket or by sending a new letter of certification.

(c) When you transfer gasoline to a common carrier, you must certify the octane rating of the gasoline to the common carrier, either by letter or on the delivery ticket or other paper.

§ 306.6 Recordkeeping.

You must keep records of how you determined octane ratings for one year. They must be open for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by people authorized by FTC or EPA.

DUTIES OF DISTRIBUTORS

§ 306.7 Certification.

If you are a distributor, you must certify the octane rating of the gaso-

line in each transfer you make to anyone who is not a consumer.

(a)(1) If you do not blend the gasoline with other gasoline, you must certify consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must certify consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to certify the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.4.

(2) In all cases above, the octane rating may be rounded to a whole or half number equal to or less than the number certified to you or determined by you.

(b) You may certify either by using a delivery ticket with each transfer of gasoline, as outlined in § 306.5(a), or by using a letter of certification, as outlined in § 306.5(b).

(c) When you transfer gasoline to a common carrier, you must certify the octane rating of the gasoline to the common carrier, either by letter or on the delivery ticket or other paper. When you receive gasoline from a common carrier, you must also receive from the common carrier a certification of the octane rating of the gasoline, either by letter or on the delivery ticket or other paper.

§ 306.8 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your octane rating certifications. You must also keep for one year records of any octane rating determinations you made according to § 306.4. They must be open for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by persons authorized by FTC or EPA.

DUTIES OF RETAILERS

§ 306.9 Octane posting.

(a) If you are a retailer, you must post the octane rating of all gasoline

you sell to consumers. You must do this by putting at least one label on each face of each gasoline dispenser through which you sell gasoline. If you are selling two or more kinds of gasoline with different octane ratings from a single dispenser, you must put separate labels for each kind of gasoline on each face of the dispenser.

(b)(1) The label, or labels, must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of the gasoline.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission. You must state the reasons why you want the exemption.

(c) If you do not blend the gasoline with other gasoline, you must post consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must post consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to post the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.4. In all cases above, the octane rating must be shown as a whole or half number equal to or less than the octane rating certified to you or determined by you.

(d)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you can satisfy the law by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(e) When you receive gasoline from a common carrier, you must also receive from the common carrier a certification of the octane rating of the gasoline, either by letter or on the delivery ticket or other paper.

§ 306.10 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your posting of octane ratings. You must also keep for one year records of any octane rating determinations you made according to § 306.4. These records may be kept at the retail station, or at another, reasonably close location. They must be open for inspection by Federal Trade Commission and Environmental Protection Agency staff members or by persons authorized by FTC or EPA.

LABEL SPECIFICATIONS

§ 306.11 Labels.

All labels must meet the following specifications:

(a) *Layout.* The label is 3" wide x 2½" long. The illustrations appearing at the end of this rule are prototype labels that demonstrate the proper layout. Helvetica type is used throughout except for the octane rating number which is in Franklin gothic type. Spacing of the label is ¼" between the top border and the first line of text, ⅛" between the first and second line of text, ¼" between the octane rating and the line of text above it. All text and numerals are centered within the interior borders.

(b) *Type size and setting.* The Helvetica series is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems and by linotype. The line "MINIMUM OCTANE RATING" is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12½ points. The line "(R + M)/2 METHOD" is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10½ points. The octane number is set in 96 point Franklin gothic condensed with ⅛" space between the numbers.

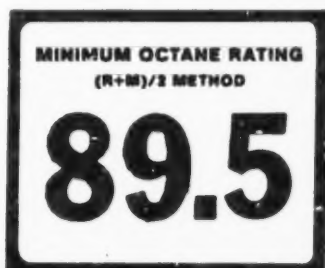
(c) *Colors.* The basic color on all labels is process yellow. All type is process black. All borders are process black. Both colors must be non-fade.

(d) *Contents.* The contents are shown in the illustration. The proper octane rating for each gasoline must be shown. No marks or information

other than that called for by this rule may appear on the label.

(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to gasoline, oil, grease, solvents, detergents, and water.

(f) *Illustrations of labels.* Labels should meet the specifications in this section, and should look like these examples, except the black print should be on a yellow background.



SUBCHAPTER D—TRADE REGULATION RULES

PART 400—ADVERTISING AND LABELING AS TO SIZE OF SLEEPING BAGS

§ 400.1 The Rule.

(a) The Commission finds that: (1) Manufacturers and distributors have engaged in the practice of selling sleeping bags in commerce, as "commerce" is defined in the Federal Trade Commission Act, marked as to "cut size," i.e. the dimensions of the material used in making such sleeping bags, without disclosing the size of the finished products; (2) this practice has the tendency and capacity (i) to mislead and deceive purchasers into believing that the "cut size" represents the actual dimensions of the finished products, whereas the finished size of sleeping bags is in fact substantially smaller than the "cut size" of the materials from which they are made, a matter of primary importance to the consumer, and (ii) to divert business from competitors who clearly disclose the finished size of their sleeping bags; and that, therefore, (3) this practice constitutes an unfair method of competition in commerce, and an unfair and deceptive act or practice in commerce, in violation of section 5 of the Federal Trade Commission Act.

(b) Accordingly, the Commission hereby promulgates, as a Trade Regulation Rule, its findings and determination that in connection with the sale or offering for sale of sleeping bags, any representation of the "cut size" or the dimensions of materials used in the construction of sleeping bags, in advertising, labeling, marking or otherwise, constitutes an unfair method of competition and an unfair and deceptive act or practice, unless—

(1) The dimensions of the cut size are accurate measurements of the yard goods used in construction of the sleeping bags; and

(2) Such "cut size" dimensions are accompanied by the words "cut size"; and

(3) The "cut size" is accompanied by a clear and conspicuous disclosure of the length and width of the finished products and by an explanation that

such dimensions constitute the finished size.

Example. An example of proper size marking when the product has a finished size of 33" x 68" and a cut size of 36" x 72", and disclosure is made of the cut size, is—Finished size 33" x 68"; cut size 36" x 72".

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[28 FR 10900, Oct. 11, 1963]

PART 401—MISUSE OF "AUTOMATIC" OR TERMS OF SIMILAR IMPORT AS DESCRIPTIVE OF HOUSEHOLD ELECTRIC SEWING MACHINES

Sec.

- 401.1 Facts regarding "automatic" claims.
- 401.2 Deceptive nature of the claims.
- 401.3 Arguments in opposition to the rule.
- 401.4 The rule.
- 401.5 Future product improvement.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 30 FR 8900, July 15, 1965, unless otherwise noted.

§ 401.1 Facts regarding "automatic" claims.

(a) The terms "automatic," "fully automatic," "automatic zig-zag sewing machine," and other words and expressions of similar import as well as illustrations and depictions indicative of automaticity have been widely used in labeling and advertising by manufacturers, distributors, and retailers as descriptive of the overall functions or operations of household electric sewing machines, in the sale of such machines in commerce, as "commerce" is defined in the Federal Trade Commission Act. Such terms, illustrations, and depictions have similarly been used to describe the function or operation of specific attachments or components of household electric sewing machines, which after activation and by self-operation, without human intervention, will perform the mechanical function or operation indicated by its descriptive name or term.

(b) "Automatic" means self-operating or self-regulating. Consumers therefore are led to believe that once activated, a sewing machine so de-

scribed or depicted will operate mechanically without intervening human effort. However, no household electric sewing machine is automatic or self-operating in its entirety or as to its overall functions or operations, since all require considerable control, skill, knowledge, and personal intervention by the operator to achieve satisfactory results. Sewing machines, unlike "automatic" washing machines or dishwashers, cannot be turned on and left to operate by themselves.

(c) In any event, the industry asserts that terms such as "automatic" may properly be used with reference to a number of attachments or components of sewing machines, which may be attached to or built in such machines to automatically perform specified operations. It would appear that insofar as such attachments or components, after activation and by self-operation, will perform their function or cycle of operation without manual intervention, they may be described as "automatic": *Provided*, The descriptive word or term used does not imply that the entire machine is automatic.

§ 401.2 Deceptive nature of the claims.

Many consumers, including the less sophisticated, paying substantial sums which may be up to \$395 and more for a sewing machine, by the use of the term "automatic," as well as illustrations and depictions indicative of automaticity, are led in many instances to believe that merely by the twist of a dial or the flick of a lever they will be able to easily perform complicated sewing operations. In short, they are given the impression that the machines so described or depicted are simple and easy to use because they are self-operating and require no manual intervention. This is deceptive. In fact, the machines are not self-operating and are not necessarily simple and easy to use. Prerequisite to successful operation of such machines for certain uses is a considerable degree of manual dexterity and sewing skill in which many such consumers are frequently deficient. Accordingly, the use of such terms, words, illustrations, and depictions has the capacity and tendency to mislead and deceive the purchasing public.

§ 401.3 Arguments in opposition to the rule.

(a) Sewing machine manufacturers and distributors point to the long-standing use of such phrases as "automatic zig-zag sewing machine" to maintain that they have acquired a secondary meaning to the purchasing public. Because of this secondary meaning, it is argued, consumers are not deceived into believing that a machine described by such terms as "automatic zig-zag sewing machine" would sew by itself, after activation, without human intervention. Absent deception or injury to the public, it is stated, the promulgation of a Trade Regulation Rule would be beyond the power and authority of the Federal Trade Commission and would engender more confusion than benefit to consumers.

(b) Neither the record nor other facts of which the Commission has knowledge support the contention that a secondary meaning has been established for "automatic zig-zag sewing machine" or similar terms connoting automatism. At best, only certain functions or operations of such machines are possibly automatic. There is also substantial evidence in the record that purchasers were deceived and misled as to the performing ability of so-called "automatic" sewing machines, to the extent that even some of the functions described as automatic required considerably more skill and dexterity to operate than consumers believed would be necessary.

(c) In the event of future product development, provision is made for amendment of the rule in this part or for other appropriate action.

§ 401.4 The rule.

(a) On the basis of the foregoing, the Commission concludes that the practice of representing or describing household electric sewing machines as "automatic," "fully automatic," "automatic zig-zag sewing machine," or by other words, terms, illustrations, or depictions indicative of automaticity, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and to divert business

from competitors who do not so describe their products. The Commission further concludes that this practice is violative of section 5 of the Federal Trade Commission Act, and that the public interest therein is substantial.

(b) Accordingly, for the purpose of preventing such practice, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale of household electric sewing machines in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice to:

(1) Use the word "automatic" or any other word or term of similar import to describe a household electric sewing machine either in its entirety or as to its overall function or operation, or use any illustration or depiction which represents that such a machine is automatic in its entirety or as to its overall function or operation. Examples of terms prohibited by the rule in this part are:

Automatic sewing machine.
Automatic zig-zag sewing machine.
Automatic machine.
Sews automatically.
Automatic straight stitcher.

(2) Use the word "automatic" or any word or term of similar import to describe a specific attachment or component, or the function of such attachment or component, of a household electric sewing machine or use any illustration or depiction which represents that such attachment or component or the function of such attachment or component of such machine is automatic unless, after activation and by self-operation, such attachment or component will without human intervention perform the mechanical function indicated by any accompanying descriptive term such as "bobbin winder" or "zig-zag attachment" and the descriptive word or term so used does not imply that the entire machine is automatic. Examples of representations which may be used when properly descriptive of sewing machine attachments and components, or the functions thereof, are:

Automatic zig-zag attachment.

Winds bobbin automatically.
Automatic buttonhole stitch attachment.
Makes zig-zag stitches automatically.

§ 401.5 Future product improvement.

In the event any person develops a household electric sewing machine which he believes is in fact automatic in that it will sew by itself, after activation, without human intervention, he may apply to the Commission for an amendment of the rule in this part or for other appropriate relief. The application shall be filed with the Secretary, Federal Trade Commission, and be accompanied by a full report of the data upon which the applicant relies to substantiate his claim that the sewing machine is automatic. The Commission will give public notice of the application and afford interested persons an opportunity to submit written data, views, or arguments. The Commission in its discretion shall also order such further proceedings as it deems to be necessary. If the Commission determines that the applicant's claim has been substantiated it will issue an appropriate order amending the rule in this part or take such other action as may be warranted.

PART 402—DECEPTION AS TO NON-PRISMATIC AND PARTIALLY PRISMATIC INSTRUMENTS BEING PRISMATIC BINOCULARS

Sec.

- 402.1 Practices involved.
- 402.2 Trade and public understanding of "binocular."
- 402.3 Deceptive appearance of instruments having bulges.
- 402.4 Use of "binocular" with qualification.
- 402.5 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 29 FR 7316, June 5, 1964, unless otherwise noted.

§ 402.1 Practices involved.

Manufacturers and distributors of nonprismatic and combination prism-mirror two-tube hand-held viewing instruments engaged in the sale of such instruments in commerce, as "commerce" is defined in the Federal Trade Commission Act, have (a) unqualifiedly described such instruments as "bin-

ocular" and "binoculars" and (b) marketed such instruments having bulges on the tubes which give the appearance of being prismatic instruments.

§ 402.2 Trade and public understanding of "binocular."

The record in this proceeding shows that neither the trade nor the consuming public has a clear understanding of the meaning of the term "binocular." Some members of the trade expressed the view that a "binocular" is any two-tubed viewing instrument, whether prismatic or nonprismatic, while others thought that the word "binocular" meant a fully prismatic instrument only. Although the record does not include any direct expression from consumers as to their understanding of the word, members of the trade and others have furnished statements based on their experience with consumer purchasers. These statements indicate that in the minds of many consumers a binocular is a viewing instrument which is fully prismatic. There is ample justification for the conclusion that a substantial portion of the consuming public understands an instrument described as a binocular to be a fully prismatic instrument.

§ 402.3 Deceptive appearance of instruments having bulges.

Prismatic binoculars characteristically have a bulge on each tube which houses or covers the prisms. Some nonprismatic and partially prismatic instruments, however, are made with bulges which give them the appearance of prismatic binoculars. By reason of such bulge construction, consumer purchasers are led to believe that nonprismatic instruments are prismatic unless there is adequate disclosure that they are nonprismatic or only partially prismatic.

§ 402.4 Use of "binocular" with qualification.

Many members of the trade and others have urged that the word "binocular" not be barred completely as descriptive of nonprismatic instruments, but that its use be permitted with appropriate qualification. The Commission has given careful consideration to the question of whether a

remedy less drastic than excision would suffice. Upon consideration of the entire matter, the Commission has concluded that the deception would be removed and the public interest fully served if the word "binocular" were clearly qualified to disclose the fact that the instrument contains no prisms or is only partially prismatic.

§ 402.5 The rule.

(a) On the basis of the foregoing, the Commission concludes that in connection with the sale of nonprismatic and combination prism-mirror two-tube hand-held observation instruments the practices of (1) unqualifiedly describing such instruments as "binocular" or "binoculars," and (2) failing to disclose that instruments having bulges on the tubes which simulate prismatic instruments are not prismatic instruments or do not contain complete prism systems, as the case may be, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers and to divert business from competitors who truthfully and properly describe and label such products. The Commission further concludes that these practices are violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing their use is specific and substantial.

(b) Accordingly, for the purpose of preventing such unlawful practices, the Commission hereby promulgates, as a trade regulation rule, its conclusions and determination that in connection with the sale of nonprismatic or combination mirror-prismatic two-tube hand-held observation instruments in commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair or deceptive act or practice to:

(1) Represent in any manner that nonprismatic instruments are prismatic or that combination mirror-prismatic instruments contain complete prismatic systems; or

(2) Describe such instruments as "binocular" or "binoculars" unless clear and conspicuous disclosure is made that nonprismatic instruments do not contain prisms or that combina-

tion mirror-prismatic instruments do not contain complete prismatic systems; or

(3) Fail clearly and conspicuously to disclose the fact that nonprismatic instruments do not contain prisms or that combination mirror-prismatic instruments do not contain complete prismatic systems, when such instruments have bulges on the tubes which create the characteristic appearance of prismatic binoculars.

(c) The disclosures required by this section shall be clearly and conspicuously made in all advertising and on the product and be of such permanence as to remain legible until received by the consumer purchaser.

(d) Examples of terms acceptable as descriptive of such products under this section are:

(1) "Binocular" may be used without qualification to describe any product which is fully prismatic.

(2) "Binocular—Nonprismatic" may be used to describe any nonprismatic product coming within the purview of this section.

(3) "Binocular—Mirror-prismatic" or "Binocular—Partially Prismatic" may be used to describe products which have combination mirror and prism systems.

(4) "Binocular—Nonprismatic Mirror" may be used to describe a nonprismatic product having a mirror reflecting system.

(5) "Field Glasses" may be used to describe straight tube nonprismatic products.

(6) "Field Glasses—Nonprismatic" may be used to describe nonprismatic products having bulges on the tubes.

PART 403—DECEPTIVE USE OF "LEAKPROOF," "GUARANTEED LEAKPROOF," ETC., AS DESCRIPTIVE OF DRY CELL BATTERIES

Sec.

403.1 Facts regarding leakproof claims.

403.2 Deceptive character of the claims.

403.3 Arguments in opposition to the rule.

403.4 The rule.

403.5 Guarantees against damage from leakage.

403.6 Future product improvement.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 29 FR 6535, May 20, 1964, unless otherwise noted.

§ 403.1 Facts regarding leakproof claims.

(a) The terms "leakproof," "guaranteed leakproof" and other words and terms of similar import as descriptive of dry cell batteries are currently used in labeling and advertising in the sale of such batteries in commerce, as "commerce" is defined in the Federal Trade Commission Act. Batteries so described are sold for use in a great number and variety of devices which employ batteries as functional component parts.

(b) Despite efforts by dry cell battery manufacturers to eliminate electrolyte leakage, no dry cell batteries currently marketed and distributed are proof against such leakage. This is evidenced by, among other things, statements and statistics furnished by industry members, experts in the field of electrical power sources, marketers of battery operated devices and by consumers. Moreover, the fact that battery leakage does cause extensive damage to devices in which batteries are employed, and to other articles, such as carpet, clothing and furniture has not been disputed.

(c) Although battery leakage may occur while a battery is being discharged, it is more likely to occur after the useful life of the battery has been expended. Consequently, damage from leakage often results from the failure of the user to remove the battery from a device after it has been discharged. Leakage and damage therefrom are also caused or accelerated by continuous drainage of the current or by the use of a battery in a device which may short out or overheat the battery. Climatic conditions, such as heat or high humidity, may also induce battery leakage. Each year literally thousands of incidents of actual damage resulting from leakage of batteries described as "leakproof" and "guaranteed leakproof" are brought to the attention of battery manufacturers by consumers. Under these circumstances, it is concluded that battery leakage and damage therefrom occurs under those conditions of use to which consumers ordinarily subject dry cell batteries.

§ 403.2 Deceptive character of the claims.

The use of the terms "leakproof" and "guaranteed leakproof" and words and representations of similar import in the labeling and advertising of dry cell batteries constitutes a representation that the batteries so described will not leak, and has the capacity and tendency to lead purchasers to believe that there is no danger of leakage or damage resulting therefrom when batteries so described are used in any battery-powered device regardless of the adequacy of design of such device, the duration of use, or other conditions of usage which contribute to electrolyte leakage. Moreover, the use of such terms has the capacity and tendency to lead purchasers to believe that there is no need for periodic inspection of batteries so described.

§ 403.3 Arguments in opposition to the rule.

(a) Many marketers offer a guarantee against damage resulting from leakage. The terms of the guarantee are usually set forth on the battery, and the obligation assumed by most marketers thereunder is to replace batteries and repair or replace any flashlights damaged by leakage. Some marketers voluntarily extend this guarantee to cover the repair or replacement of other devices or property damaged by leakage. It has been argued in opposition to the adoption of the rule that the consumer is adequately protected by scrupulous performance under such guarantees, and that marketers offering these benefits are entitled to call consumer attention thereto by the use of unequivocal "leakproof" claims. This argument is rejected since it is clear that the offering of guarantees and even voluntary performance by the guarantor beyond the scope of the guarantee cannot justify claims which attribute to a product qualities which it does not in fact possess. As to the contention that to disallow the use of "leakproof" representations would deprive consumers of the protection currently furnished them, the rule clearly states that it shall not be interpreted as prohibiting the offering of guarantees which provide for restitution in the event of damage from electrolyte leakage pro-

vided no representation is made that the batteries in question are proof against leakage.

(b) It is further argued in opposition to the adoption of the rule that any prohibition of "leakproof" representations will remove the incentive of industry members to develop a genuinely leakproof dry cell battery. This argument is also rejected. By preventing use of such absolute claims as descriptive of batteries which are not proof against leakage, the rule should have the effect of encouraging members of the industry to develop batteries which are in fact leakproof. In the event such a battery should be constructed, the rule may be amended upon a proper showing to permit use of "leakproof" representations as descriptive of batteries having such "leakproof" construction.

§ 403.4 The rule.

(a) On the basis of the foregoing, the Commission concludes that the practice of describing dry cell batteries as "leakproof", "guaranteed leakproof" or by similar representations has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and to divert business from competitors who do not so describe their products. The Commission further concludes that this practice is violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing its use is specific and substantial.

(b) Accordingly, for the purpose of preventing such unlawful practices, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale of dry cell batteries in commerce, as "commerce" is defined in the Federal Trade Commission Act, the use of the word "leakproof", the term "guaranteed leakproof" or any other word or term of similar import, or any abbreviation thereof, in advertising, labeling, marking or otherwise, as descriptive of dry cell batteries constitutes an unfair method of competition and an unfair or deceptive act or practice.

§ 403.5 Guarantees against damage from leakage.

The rule should not be interpreted as prohibiting manufacturers or other marketers from offering or furnishing guarantees which provide for restitution in the event of damage from electrolyte leakage provided no representation is made, directly or indirectly, that dry cell batteries will not leak.

§ 403.6 Future product improvement.

In the event any person develops a new or improved dry cell battery which he believes is in fact leakproof, he may apply to the Commission for an amendment to the rule or for other appropriate relief. The application shall be filed with the Secretary, Federal Trade Commission, and be accompanied by a full report of the data upon which the applicant relies to substantiate his claim that the battery is leakproof. The Commission will give public notice of the application and afford interested persons an opportunity to submit written data, views or arguments. The Commission in its discretion may also order such further proceedings as it deems to be necessary. If the Commission determines that the applicant's claim has been substantiated, it will issue an appropriate order amending the rule or taking such other action as may be warranted.

PART 404—DECEPTIVE ADVERTISING AND LABELING AS TO SIZE OF TABLECLOTHS AND RELATED PRODUCTS

Sec.

404.1 Deceptive use of the term "cut size."

404.2 Request for tolerance in stating finished sizes.

404.3 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 29 FR 11261, Aug. 5, 1964, unless otherwise noted.

§ 404.1 Deceptive use of the term "cut size."

The record in this proceeding shows that many marketers of tablecloths and related products use the term "cut size" to designate the dimensions of

their products but do not disclose the finished sizes thereof. It is further shown that the cut sizes, i.e., the dimensions of the material used in making tablecloths and related products before hemming and finishing, are usually larger than the completed or finished sizes thereof. The record also shows that to many consumers the size marked on a tablecloth or related product means the actual size of the finished product and that this meaning is not dispelled by the words "cut size" alone without a disclosure of the finished size identified as such. Upon consideration of the entire matter, including the Commission's accumulated experience in matters involving the unqualified use of the term "cut size", the Commission has concluded that use of the "cut size" alone to designate sizes of tablecloths and related products, has the capacity and tendency to mislead consumer purchasers into believing that such size represents the actual dimensions of the finished product.

§ 404.2 Request for tolerance in stating finished sizes.

The Commission also has carefully considered requests of affected parties for a rule provision which would establish a tolerance in stating the finished sizes of their products. It was asserted that manufacturers of these products are unable to control the exact finished sizes thereof due to variations inherent in the manufacturing and processing operations, as well as to the varying characteristics of different materials used in the manufacture of such products. The primary purpose of this rule is to prevent deception of consumers as to the size of tablecloths and related products. To permit a substantial deviation from the designated size in the form of a tolerance would not be consistent with this purpose. In applying the rule, however, allowance will be made for minor deviations from the stated finished size which are unavoidable despite the exercise of due care.

§ 404.3 The rule.

(a) On the basis of the foregoing, the Commission concludes that the

practice of selling tablecloths and related products in commerce, as "commerce" is defined in the Federal Trade Commission Act, marked as to "cut size," i.e., the dimensions of the material used in making such products, without disclosing the size of the finished products, (1) has the capacity and tendency (i) to mislead and deceive purchasers into believing that the "cut size" represents the actual dimensions of the finished products, whereas the finished sizes of such products are in fact usually smaller than the "cut size" of the materials from which they are made, a matter of importance to the consumer, and (ii) to divert business from competitors who clearly disclose the finished size of their products, and that, therefore, (2) this practice constitutes an unfair method of competition in commerce, and an unfair and deceptive act or practice in commerce, in violation of Section 5 of the Federal Trade Commission Act. The Commission further concludes that the public interest in preventing this practice is specific and substantial.

(b) Accordingly, for the purpose of preventing such unlawful practice, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale or offering for sale of tablecloths and related products such as doilies, table mats, dresser scarves, place mats, table runners, napkins and tea sets, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any representation of the "cut size" or the dimensions of materials used in the construction of tablecloths and related products in advertising, labeling, marking or otherwise, constitutes an unfair method of competition and an unfair and deceptive act or practice, unless—

(1) Such "cut size" dimensions are accompanied by the words "cut size"; and

(2) The "cut size" is accompanied by a clear and conspicuous disclosure of the dimensions of the finished products and by an explanation that such dimensions constitute the finished size.

Example. An example of proper size marking when the product has a finished size of

50" x 68" and a cut size of 52" x 70", and disclosure is made of the cut size, is—"Finished size 50" x 68"; Cut size 52" x 70".

PART 405—MISBRANDING AND DECEPTION AS TO LEATHER CONTENT OF WAIST BELTS

Sec.

405.1 Character of the deception.

405.2 Contentions regarding terminology for split leather.

405.3 Application of the rule to women's and children's belts.

405.4 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 29 FR 8166, June 27, 1964, unless otherwise noted.

§ 405.1 Character of the deception.

(a) Manufacturers and distributors of men's, boys', women's and children's belts have engaged in the practice of selling certain belts in commerce, as "commerce" is defined in the Federal Trade Commission Act, without adequate disclosure of facts concerning the actual composition thereof or any disclaimer that the product is leather, and have misbranded or otherwise misrepresented the content of such belts. The misbranding or deception in question has involved belts manufactured from split leather, leather fibers or dust, imitation leather or other non-leather material having the appearance of leather, and leather which has been processed or otherwise finished to simulate or resemble the appearance of a different kind of leather.

(b) Some affected parties have urged that the rule should not require affirmative disclosure with respect to the content of waist belts in the absence of any mismarking or mislabeling thereof. This contention is rejected for the reason that it is well settled that deception which is harmful to the business community and the consuming public can result from the misleading appearance of a product in the absence of an affirmative disclosure as to its actual composition or a disclaimer that it is leather.

§ 405.2 Contentions regarding terminology for split leather.

(a) Several industry members, who utilize split leather primarily in the manufacture of belts for the lower priced market, and their trade association have urged that the word "split" has a derogatory connotation in the trade and that in its place they should be permitted either to use the word "leather", without qualification, to describe such belts or to employ the term "flesh-side" instead of "split". It is argued that the consuming public would be adequately protected if the rule so provided. However, many consumers believe that the word "leather" without qualification, means top grain leather. Moreover, the precise meaning of the term "flesh-side" has not become sufficiently established to be generally accepted even among the trade and it is evident that its use at the retail level would only serve to confuse and mislead the consumer.

(b) On the basis of the foregoing, the Commission concludes that the practices described herein have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of waist belts and to divert business from competitors who clearly and properly describe and label such products. The Commission further concludes that these practices are violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing their use is specific and substantial.

§ 405.3 Application of the rule to women's and children's belts.

Some industry members expressed the view that all women's belts should be excluded from the proposed rule because many such belts are sold as part of a garment, rather than independently. This contention ignores the fact that very substantial quantities of women's belts are sold singly and not as part of a garment and thus affords no basis for excluding all women's belts from the application of the rule. Upon careful consideration the Commission has concluded that in the public interest the deception here involved would be removed by providing for the marking, tagging or labeling of women's and children's belts when

sold separately, in accordance with the provisions of the rule.

§ 405.4 The rule.

Accordingly, for the purpose of preventing such unlawful practices, the Commission hereby promulgates as a Trade Regulation Rule, its conclusions and determination that in connection with the sale or offering for sale of men's and boys' belts, and women's and children's belts when not offered for sale as part of a garment, in commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

(a) Represent, directly or by implication, in advertising, labeling, marking or otherwise:

(1) That a belt which is not made from the hide or skin of an animal is leather (e.g., words such as "leather," "hide" or "skin," or depictions, symbols or other words or terms indicative of leather, shall not be used to describe a belt not made from the hide or skin of an animal); or

(2) That a belt is made of leather when such belt is composed of ground, pulverized or shredded leather. This provision shall not be construed as prohibiting the use of terms such as "shredded leather fibers" or "pulverized leather," as the case may be, to describe the composition of belts; or

(3) That a belt made of split leather is "genuine cowhide," "finished cowhide," "alligator" or "leather," or use any other term which may indicate that it is composed of top grain leather. Belts composed of split leather shall be described or marked "split leather;" or

(4) That a belt is made from a specified animal hide or skin when such is not the fact (e.g., cowhide shall not be represented as "alligator" or "Morocco"); or

(5) That a belt is made wholly of a certain kind of leather or other specified material when in fact it is composed only in part of such leather or other material.

(b) Sell or distribute belts which have the appearance of leather, but which are made of split leather or

ground, pulverized or shredded leather or of nonleather material, unless disclosure is made on the product or on tag or label affixed thereto of the composition of the product (e.g., "split leather" or "leather fibers" or "plastic," as the case may be) or of the fact that the product is not leather (e.g., "imitation leather").

(c) Sell or distribute belts made of leather or split leather which has been embossed, dyed or otherwise processed so as to have the appearance of a different kind of leather, unless disclosure is made on the product or on a tag or label affixed thereto of the kind of leather or split leather of which the belts are composed. For example, a belt composed of cowhide embossed or otherwise processed to simulate alligator could be described as "cowhide" or "cowhide embossed to simulate alligator," and a belt composed of split cowhide processed to simulate pigskin grain could be described as "split cowhide" or "split cowhide with simulated pigskin grain."

(d) Sell or distribute belts having an outer surface of leather or other material which are backed with a different kind of leather or non-leather material having the appearance of leather, unless disclosure is made on the product or on a tag or label affixed thereto of the kind or type of leather used in the backing or of the fact that the backing is of non-leather material, as the case may be.

PART 406—DECEPTIVE ADVERTISING AND LABELING OF PREVIOUSLY USED LUBRICATING OIL

Sec.

406.1 The practices involved.

406.2 Deception as to previous use of oil.

406.3 Necessity for front or face panel disclosure.

406.4 Deceptive use of the term "re-refined."

406.5 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 29 FR 11650, Aug. 14, 1964, unless otherwise noted.

EDITORIAL NOTE: For partial suspension affecting Part 406, see 46 FR 20979, Apr. 8, 1981.

§ 406.1 The practices involved.

Processors, wholesalers and other marketers of lubricating oil composed in whole or in part of used oil, in the sale of such oil in commerce as "commerce" is defined in the Federal Trade Commission Act, have (a) failed to disclose clearly and conspicuously the fact that such oil has been previously used or contains used oil, as the case may be, (b) represented directly or by implication that such oil is new and unused, and (c) represented that such oil has been "re-refined" when in fact the physical and chemical contaminants acquired through use have not been removed by a refining process.

§ 406.2 Deception as to previous use of oil.

(a) Reclaimers of lubricating oils generally obtain their base stocks from service stations, garages, and other sources where crankcase drainings and other waste oils are collected. These waste products are subjected to various processes which, depending on the completeness of the process used, result in the removal of some or all of the contaminants acquired through use. The resulting oils, which are sometimes blended with additives and sometimes with oil from virgin stocks, are customarily put into containers of the same general size, kind and appearance as those used for new and unused oil. The oil is then offered for sale to the public at gasoline filling stations and other retail outlets in the same manner and for the same purposes as unused lubricating oil. On the basis of previous Commission decisions, its knowledge of conditions in the marketing of the product, and the matters presented in the course of this rulemaking proceeding, the Commission finds that many consumers prefer new and unused lubricating oil. In the absence of a clear and conspicuous disclosure of the fact of previous use, consumers have no means by which they can readily determine that such products are composed in whole or part of previously used oil, and are led to believe that such products are composed entirely of new and unused oil.

(b) It has been urged that reclaimers of oil perform a public service in that they collect and remove used oil which

is potentially harmful and dangerous, and which otherwise would constitute an industrial and sanitation problem. It has also been asserted that oil does not wear out and therefore properly re-refined used oil is as good as or better than many oils produced entirely from virgin stock. The value of the service rendered by the industry is not germane to this consideration, nor is the quality of reclaimed oil involved here. It is not necessary therefore for the Commission to pass upon the relative merits of new and reclaimed oil. It is well settled that substitution is unlawful, even if a qualitative equivalence could be shown and the consumer is prejudiced if he is led to expect one thing and is supplied with something else. The public interest requires that used oils be labeled and advertised as such to prevent deception of the public and to maintain fair competition.

§ 406.3 Necessity for front or face panel disclosure.

(a) Lubricating oils, whether new, used, or blends thereof, are usually sold in round quart size cans or in larger cans, such as two gallon containers having an upright rectangular shape. Generally, these containers have a front or face panel on which the brand name is featured and which is designed to present a more attractive appearance than other parts of the container for display purposes. Some containers have more than one panel which is similarly designed.

(b) It is common knowledge that in garages, filling stations, and other retail outlets where lubricating oils are sold, oil containers are customarily arranged on racks or shelves in such a manner that only the front or face panel is clearly exposed to the view of prospective purchasers. Thus, any printed material appearing on other parts of the container would not readily be seen by the casual observer. In the marketplace, many purchasers of lubricating oil identify and recognize products by viewing only the front or face panel of the container and it is unlikely that they would observe printed material appearing on other parts of the container which are not exposed to view.

(c) In view of all the circumstances, the Commission concludes that in order for the disclosure required by this part to be clear and conspicuous, it should be placed on the front or face panel of each container. If the container has more than one panel similarly designed as a front or face panel the required disclosure should be placed on each such panel.

§ 406.4 Deceptive use of the term "re-refined."

(a) Some marketers of reclaimed lubricating oil have described their products as "re-refined" when in fact such oils have been subjected to but a simple reclaiming process. The reprocessing or reclaiming of previously used oil is accomplished by various processes. Simple reclaiming may involve only the removal of insoluble physical contaminants and sometimes a treatment to reduce chemical contaminants such as fuel fractions, water, combustion, and resinous oxidation products. These simple processes do not remove many of the contaminants acquired through previous use. Experts are not in uniform agreement as to what criteria should be met to justify the use of the term "re-refined" to describe previously used oil. Many technical persons understand "re-refining" to involve a complete and extensive processing under controlled conditions such as settling, filtration, dehydration, distillation, chemical treatment, clay treatment, and other processing, including selective solvent refining. There are variations in "re-refining" methods but the ultimate purpose of all of these is to remove physical and chemical contaminants acquired through use.

(b) Contention has been made that use of the term "re-refined" alone constitutes adequate disclosure that oil so described has been previously used. Webster's New International Dictionary, Second Edition—Unabridged, defines "refine" as "To reduce to a fine, unmixed or pure state; to separate from extraneous matter; to free from dross or alloy as metals; to free or cleanse from impurities, as wine, sugar, etc." The same dictionary defines "re" as "again;—used chiefly to

form words, especially verbs of action, denoting in general repetition (of the action of the verb) * * *." The combination of these two words, when used to describe oil, would mean, by dictionary definition, that the process of reducing oil to a fine, unmixed, or pure state has been repeated.

(c) To the consuming public the word "re-refined" as descriptive of lubricating oil is susceptible of more than one meaning. While members of the trade and more sophisticated consumers might understand that the oil so described had been previously used, to many consumer purchasers who are unaware that oil is reclaimed and resold to the public, "re-refined" could well mean a virgin oil which has been refined more than once. Even when put on notice that the oil has been previously used, many consumers would be led to believe by the word "re-refined" that the oil had been reclaimed and restored to its original condition by a refining process.

(d) The Commission concludes therefore that the word "re-refined" when used alone to describe previously used oil would not adequately inform prospective purchasers that oil so described has been previously used. The Commission further concludes that "re-refined" when coupled with a disclosure that the oil has been previously used would mean to a substantial portion of the consuming public that the oil so described has had the contaminants acquired through previous use removed therefrom by a refining process.

§ 406.5 The rule.

(a) On the basis of the foregoing, the Commission concludes that, in connection with the sale in commerce of lubricating oil composed in whole or in part of previously used oil, the practices of (1) failing to disclose clearly and conspicuously the fact that such oil has been previously used; (2) representing directly or by implication that such oil is new or unused; and (3) representing that such oil has been "re-refined" when the physical and chemical contaminants acquired through use have not been removed by a refining process; have the capacity and tendency to mislead and deceive pur-

chasers and prospective purchasers and to divert business from competitors who truthfully and properly describe and label their products. The Commission further concludes that these practices are violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing their use is specific and substantial.

(b) Accordingly, for the purpose of preventing such unlawful practices, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale or offering for sale of lubricating oil composed in whole or in part of previously used lubricating oil, in commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

(1) Represent in any manner that such used lubricating oil is new or unused; or

(2) Fail to disclose clearly and conspicuously that such used lubricating oil has been previously used, in all advertising, sales promotional material and on each front or face panel of the container. For the purpose of this Part 406 the front or face panel means the part (or parts) of the container on which the brand name is usually featured and which is customarily exposed to the view of prospective purchasers when displayed at point of retail sales; or

(3) Use the term "re-refined," or any other word or term of similar import, to describe previously used lubricating oil unless the physical and chemical contaminants acquired through previous use have been removed by a refining process. (As used in this part, the term "lubricating oil" refers to any oil used for lubricating purposes including but not limited to, motor and transmission oil.)

**PART 408—UNFAIR OR DECEPTIVE
ADVERTISING AND LABELING OF
CIGARETTES IN RELATION TO THE
HEALTH HAZARDS OF SMOKING**

CROSS REFERENCE: For a statement of basis and purpose of Trade Regulation Rule, see 29 FR 8325 of July 2, 1964.

[30 FR 9485, July 29, 1965]

**PART 409—INCANDESCENT LAMP
(LIGHT BULB) INDUSTRY**

§ 409.1 The Rule.

The Commission, on the basis of its findings in this proceeding, as set forth in the accompanying statement of basis and purpose, hereby promulgates as a trade regulation rule its determination that in connection with the sale of general service incandescent electric lamps (light bulbs) in commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition and an unfair and deceptive act or practice to:

(a) Fail to disclose clearly and conspicuously the following information for such lamps on the sleeves or paper containers in which they are packaged:

(1) The electrical power consumed expressed in average initial wattage;

(2) The light output expressed in average initial lumens;

(3) The average laboratory life expressed in hours;

Provided, however, Whenever lamps are sold in universal or interchangeable sleeves where no wattage, lumen, life, or voltage ratings are shown thereon, the disclosures required by paragraphs (a) and (b) of this section must be clearly and conspicuously made on the lamps themselves in a manner visible at point of sale in lieu of the disclosures on the sleeves.

(b) Fail to disclose clearly and conspicuously on the lamps themselves the average initial wattage and the design voltage for such lamps: *Provided, however,* Whenever lamps are sold out of the sleeves or paper containers the lumen and life disclosures required by paragraph (a) of this section shall in addition be clearly and conspicuously made on the lamps themselves.

(c) Represent or imply in any manner that savings either in lamp cost or cost of light will result from the use of certain lamps because of the lamps' life or light output (e.g., "Same light for less money", "Outlasts — ordinary bulbs", "Save — dollars for more light") unless in computing such savings the following factors are taken into account and clearly and conspicuously disclosed for the lamps with which comparison is being made and the lamps being offered for sale: Lamp cost, electrical power cost (wattage and electric rate), labor cost for lamp replacement (if any), actual light output in terms of average initial lumens, and average laboratory life: *Provided, however,* That when two lamps of identical average initial wattage, average initial lumens, and average laboratory life are being compared, and cost savings represented or implied apply only to initial purchase price, then the disclosures described in this paragraph for the lamp which is used for comparison need not be made.

(d) Represent or imply in any manner that certain lamps will give more light, maintain brightness longer or furnish longer life by the use of terms such as "long life", "extended life", "medium life", "brighter light", "better light", "stays brighter longer", or any other words or terms of similar meaning or import without clearly and conspicuously disclosing the light output in average initial lumens, the laboratory life in average hours and the average initial wattage of the lamps with which the comparison is being made and the lamps being offered for sale. In the case of claims that lamps "maintain brightness longer", there shall be, in addition to the lumen, life, and wattage disclosures required above, a clear and conspicuous disclosure of the light output after an interval equal to 70 percent of rated life (maintained average lumens) for the lamps being compared and those being offered for sale.

NOTE 1: The average initial wattage, average initial lumen and average laboratory life disclosures required by this section shall be in accordance with the requirements of interim Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament), W-L-00101G and shall be based upon

generally accepted and approved test methods and procedures. The lumen and life disclosures shall be expressed as averages, i.e., "average" lumens and "average" life. Lamps in shapes which are generally comparable to the "A" bulb shapes listed in this Federal specification should be measured by the criteria which are applicable to lamps in the nearest comparable shape of the same wattage and voltage even though such lamps may not be covered precisely by the specification. The calculation of average initial wattage, average initial lumen and average laboratory life ratings shall be determined on the basis of operation of the lamp at the stated design voltage. This, however, shall not preclude lumen disclosures for various voltage ratings of any specific lamp type of the same wattage and life from being represented as 120-volt rated information, thereby recognizing a slight variation which, of necessity, must exist from one voltage rating to another if life and wattage are to remain constant.

Since multiple filament lamps (three-way bulbs) are not covered by the Federal specification; wattage, lumen and life ratings based on tests conducted by each industry member will be sufficient: *Provided*, Such tests are based upon generally accepted and approved test methods and procedures: *And provided further*, That the life rating is based on the life of the first filament which fails and that the specific method used to determine the life rating is disclosed, i.e., lamp being burned on all three positions equally; based on life of major filament (medium light level) of lamp, etc.

NOTE 2: For a period of one (1) year from the effective date of this section, except on the bulb itself, wherever the term "lumens" is used, there shall be a brief explanation of the term such as "light output".

NOTE 3: The term "general service incandescent electric lamps" as used in this section includes all medium screw base incandescent electric lamps, 15-watt through 150-watt, 115-volt through 130-volt. The term includes not only such lamps in the customary "A" type and other bulb shapes included in Interim Federal Specification W-L-00101G, but also such lamps which are produced in generally comparable bulb shapes for sale in competition with other general service incandescent lamps. Specifically excluded, however, are lamps designed and promoted primarily for decorative applications, appliances, traffic signals, showcases, projectors, airport equipment, trains, and lamps such as color, flood, reflector, rough service, and vibration service.

NOTE 4: For purposes of paragraph (a) of this section, the requirement of clear and conspicuous disclosure means that the required disclosures shall appear on at least two panels of the outer sleeve or container in which bulbs are displayed and additional-

ly on all panels of the inner and the outer sleeve which contain any reference to wattage lumens, life, or voltage. In addition, in order to be considered clear and conspicuous, the lumen and life disclosures shall be in immediate conjunction with the wattage rating on each panel in bold or medium faced type which is at least two-fifths (%) the height of the wattage rating figures (on the same panel) or three-sixteenths of an inch ($\frac{3}{16}$ ") in height, whichever is larger.

In the case of multiple filament lamps (three-way bulbs); the lumen and life disclosures shall meet the above criteria except for the type size which shall, in this case, be medium faced type which is at least two-fifths (%) the height of the wattage rating figures or one-eighth of an inch ($\frac{1}{8}$ ") in height, whichever is larger.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[35 FR 11784, July 23, 1970]

PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

§ 410.1 The Rule.

In connection with the sale of television receiving sets, in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to use any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.

NOTE 1: For the purposes of this part, measurement of the picture area on a single plane basis refers to a measurement of the distance between the outer extremities (sides) of the picture area which does not take into account the curvature of the tube.

NOTE 2: Any referenced or footnote disclosure of the manner of measurement by means of the asterisk or some similar symbol does not satisfy the "close connection and conjunction" requirement of this part.

Examples of proper size descriptions when a television receiving set shows a 20-inch picture measured diagonally, a 19-inch picture measured horizontally, a 15-inch picture measured vertically, and a picture area of 262 square inches include:

- "20 inch picture measured diagonally" or
- "19 inch × 15 inch picture" or
- "19 inch picture" or
- "19 inch" or
- "262 square inch picture."

Examples of improper size descriptions of a television set showing a picture of the size described above include:

- "21 inch set" or
- "21 inch diagonal set" or
- "21 inch over-all diagonal—262 square inch picture" or
- "Brand Name 21."

(38 Stat. 717, as amended, 15 U.S.C. 41-58)
[36 FR 21518, Nov. 10, 1971; 36 FR 22286, Nov. 24, 1971]

PART 412—DISCRIMINATORY PRACTICES IN MEN'S AND BOYS' TAILORED CLOTHING INDUSTRY

STATEMENT OF BASIS AND PURPOSE

Sec.

- 412.1 Basis of the proceeding.
- 412.2 The Trade Regulation Rule proceeding.
- 412.3 Conclusions.
- 412.4 Purpose.

THE RULE

- 412.5 Definitions.
- 412.6 The Rule.

APPENDIX

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58; 49 Stat. 526; 15 U.S.C. 12, et seq., unless otherwise noted.

SOURCE: 32 FR 155, Nov. 9, 1967, unless otherwise noted.

STATEMENT OF BASIS AND PURPOSE

§ 412.1 Basis of the proceeding.

(a) The Commission focused its attention on the wearing apparel industry after having received numerous complaints from small apparel retailers, small manufacturers and apparel salesmen. These complainants asserted that many manufacturers of apparel, particularly in the outerwear categories of women's and misses' dresses,

suits, coats, sweaters and blouses, and men's and boys' suits, coats, slacks, shirts and sweaters, had discriminated in the granting of advertising allowances to their competing customers, in violation of section 2(d) of the Clayton Act, as amended. In order to obtain further information concerning the practices alleged in these complaints, the Commission in 1961 issued orders requiring approximately 230 of the leading buying offices, including the large department store chains, to file special reports, pursuant to section 6(b) of the Federal Trade Commission Act. Subsequently, additional orders were issued requiring over 400 sellers or suppliers of apparel, including approximately 35 suppliers of men's and boys' tailored clothing, to file similar reports. An examination of the data furnished in these reports indicated that violations of section 2(d) of the amended Clayton Act were widespread in the wearing apparel industry.¹ Moreover, it appeared that such violations usually occurred in situations where sellers failed to furnish competing customers with written promotional plans.

(b) On the basis of the information developed by this inquiry, the Commission afforded those manufacturers or suppliers which it had reason to believe were engaged in practices violative of section 2(d) of the amended Clayton Act opportunity to enter into consent agreements which included orders to cease and desist from engaging in such unlawful practices.² Of the more than 300 manufacturers or suppliers of apparel which were the subject of cease and desist orders subsequently issued, approximately 25 were manufacturers of men's and boys' tailored clothing.

(c) The Men's and Boys' Tailored Clothing Industry, a sizable segment of the apparel trade, comprised some 635 establishments according to the 1963 Census of Manufacturers published by the Bureau of the Census. In 1964 the net value of shipments by

¹Rabiner & Jontow, Inc., Docket No. 8629 (Sept. 19, 1966) p. 3.

²Abby Kent Co., Inc., et al., Docket No. C-328 et al. (Aug. 9, 1967).

manufacturers amounted to almost two billion dollars. Representatives of this industry petitioned the Commission to initiate an informal enforcement program for obtaining industry-wide compliance with sections 2 (d) and (e) of the amended Clayton Act.¹ In connection with this petition a preliminary inquiry into industry practices was conducted in the course of which interviews were had with knowledgeable sources, including other government agencies, trade associations and retail organizations. After giving consideration to the industry petition in the light of the information developed in this inquiry, together with that obtained in the earlier investigations, the Commission initiated a Trade Regulation Rule proceeding in the Men's and Boys' Tailored Clothing Industry. Before deciding upon this course of action, the Commission considered alternative methods of obtaining correction of the practices in question, including the case-by-case approach. It was concluded, however, that this purpose could be accomplished most expeditiously and equitably through the initiation of a Trade Regulation Rule proceeding.

§ 412.2 The Trade Regulation Rule proceeding.

(a) A notice of proposed rule making, including a proposed rule, was published in the *FEDERAL REGISTER* on November 9, 1966, affording all interested or affected parties an opportunity to submit data, views or arguments concerning the proposed rule, in writing or orally at a public hearing which was held on January 18, 1967. The proposed rule provided in substance that the granting or furnishing of advertising allowances or special services or facilities would be presumed to be unlawful unless made pursuant to a written plan furnished by the supplier to all of his competing customers.

(b) In the course of the public hearing, industry representatives asserted that violations of sections 2 (d) and (e) of the amended Clayton Act were widespread in the industry and attrib-

uted this primarily to the absence of written promotional plans. In support of this assertion a representative of a men's and boys' clothing manufacturers association who estimated that considerably more than 60 percent of this industry's production is covered by cooperative advertising plans, introduced a summary of a survey conducted among some of its members representing a cross-section of the industry. This survey showed that out of 48 manufacturers, 36 believed that their competitors deviated from their oral plans and granted discriminatory allowances, whereas significantly fewer manufacturers felt that their competitors discriminated when written plans were involved. Of the manufacturers polled, approximately 77 percent were of the opinion that retailers pressured manufacturers to deviate from their plans.

(c) Another association representing retail establishments selling men's wear referred to a survey made among its members which showed that of approximately 100 retailers of apparel polled, half believed that their suppliers discriminated among their customers in granting advertising allowances. Thirty expressed no opinion and 20 did not believe that manufacturers discriminated. It was stated that the ratio—50 believed yes and 20 no—fairly reflected the opinion of the entire membership of more than 3,600 members of the retail organization.

(d) According to both written and oral statements received in the proceeding many retailers, especially the larger ones, exert pressure on their suppliers for special treatment and even in the absence of such pressure oral arrangements by their nature are subject to deviations in an industry where many salesmen serve numerous customers. Industry representatives also expressed the opinion that the use of written plans supplied to all competing customers would enable a manufacturer to resist more successfully pressures for preferred treatment brought by retailers, and thus better assure lawful treatment to all of the seller's competing customers.

(e) In summary, information received during the proceeding from attorneys, businessmen and association

¹Subsections (d) and (e) of sec. 2 of the Clayton Act, as amended, are set forth in an appendix to the rule.

executives representing the manufacturing segment of the Men's and Boys' Tailored Clothing Industry fully supports the conclusion that the granting or furnishing of discriminatory advertising allowances or services in violation of section 2(d) of the amended Clayton Act is widespread in the Men's and Boys' Tailored Clothing Industry, and the further conclusion that such violations have occurred usually when sellers have failed to furnish their competing customers with written promotional plans.

(f) The information developed in this Trade Regulation Rule proceeding accords with the Commission's experience in the enforcement of sections 2(d) and (e) of the Clayton Act, as amended, particularly in the application of these statutory provisions to practices in the wearing apparel industry. It is not by coincidence that oral plans were involved in all of the litigated cases arising out of the 1961 investigation of the apparel industry⁴ and in all but one of the cases in the Men's and Boys' Tailored Clothing Industry disposed of by consent orders. On the basis of this information and experience, the Commission believes that written confirmation of promotional plans appears to be the most—and perhaps the only—completely reliable and fair method of assuring compliance with the law.⁵

§ 412.3 Conclusions.

In view of the foregoing the Commission concludes that:

(a) The practice of granting or furnishing discriminatory advertising allowances or services in violation of sections 2(d) and (e) of the amended Clayton Act is widespread in the Men's and Boys' Tailored Clothing Industry;

(b) These violations usually occur when sellers fail to supply written pro-

motional plans to their customers who compete in the resale of their products;

(c) A reasonable relationship exists between the facts shown and the presumption stated in the rule; and

(d) The rule affords the most expeditious and equitable means of eliminating and preventing such violations.

§ 412.4 Purpose.

The purpose of this rule is to inform all interested or affected parties of the Commission's position with respect to the practices in question and to aid the Commission in the prevention of practices violative of sections 2(d) and (e) of the Clayton Act, as amended, in the Men's and Boys' Tailored Clothing Industry, on an equitable and industrywide basis.

THE RULE

§ 412.5 Definitions.

For the purpose of this rule the following definitions apply:

(a) *Products.* Men's youths' and boys' suits, coats, overcoats, topcoats, jackets, dress trousers and uniforms.

(b) *Seller.* Any person, firm, corporation or organization engaged in the sale of products for resale with or without further processing.

(c) *Customer or purchaser.* Persons, firms, corporations or organizations engaged in the purchase of products for resale.

(d) *Customers competing in the resale and competing customers.* Mean those customers who compete with each other in the distribution of a seller's products.

§ 412.6 The Rule.

The Commission hereby promulgates as a Trade Regulation Rule its conclusions and determination that the granting or furnishing, in whole or in part, of any advertising payment or promotional allowance, service or facility, by any seller of men's, youths' and boys' suits, coats, overcoats, topcoats, jackets, dress trousers and uniforms to a customer engaged in the resale of such products, will be presumed not to have been made available on proportionally equal terms to

⁴Rabiner & Jontow, Inc., Docket No. 8629 (Sept. 19, 1966), Gladstone-Arcuni, Inc., Initial Decision, Docket No. 8664 (Feb. 10, 1967), House of Lord's, Inc., Docket No. 8631 (Jan. 18, 1963), and Best & Co., Inc., Docket No. 8669 (Sept. 7, 1967).

⁵House of Lord's, Inc., *supra* at p. 18; see also: Vanity Fair Paper Mills, Inc. v. Federal Trade Commission, 311 F. 2d 480, 485-486 (2d Cir. 1962).

all the seller's customers competing in the resale of such products within the purview of sections 2 (d) and (e) of the amended Clayton Act, unless such payments or allowances, services or facilities, have been made available pursuant to and in accordance with all the terms and conditions of a written plan supplied to all such competing customers.

APPENDIX

Set forth below are subsections (d) and (e) of section 2 of the Clayton Act, as amended:

"(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

"(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms."

PART 413—FAILURE TO DISCLOSE THAT SKIN IRRITATION MAY RESULT FROM WASHING OR HANDLING GLASS FIBER CURTAINS AND DRAPERIES AND GLASS FIBER CURTAIN AND DRAPERY FABRICS

STATEMENT OF BASIS AND PURPOSE

Sec.

- 413.1 Basis of the proceeding.
- 413.2 The practice involved.
- 413.3 Deceptive character of the practice.
- 413.4 Data, views and arguments concerning the rule
- 413.5 Purpose of the rule.

THE RULE

- 413.6 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 32 FR 11023, July 28, 1967, unless otherwise noted.

STATEMENT OF BASIS AND PURPOSE

§ 413.1 Basis of the proceeding.

This proceeding was initiated by the Commission after consideration of statements by members of the consuming public that they had experienced skin irritation after washing or handling glass fiber curtains and draperies and glass fiber curtain and drapery fabrics.

§ 413.2 The practice involved.

Marketers of glass fiber curtains and draperies and glass fiber curtain and drapery fabrics usually furnish washing instructions for such products in the form of package inserts, labels, or tags. Normally these instructions, among other things, advise the purchaser to hand wash the products separately and rinse the container thoroughly after each washing. Purchasers are not cautioned, however, that skin irritation may result when the products are handled without protective covering, as by washing, sewing or hanging, or that such irritation may also occur when the skin is exposed to articles, such as clothing or bed sheets, which have been washed with glass fiber products, or in a container previously used for washing glass fiber products unless such container has been thoroughly cleared of glass particles which may remain in the container.

§ 413.3 Deceptive character of the practice.

(a) Most glass fibers currently used in weaving fabrics for producing curtains and draperies become increasingly brittle with enlargement of the denier of such fibers. When such fabrics are handled, as by washing, sewing, or hanging, minute glass particles may break off and become lodged in the exposed skin of persons handling them. Likewise when certain articles, such as garments or bed sheets, are washed with glass fiber curtain or drapery fabrics, or washed in a con-

tainer previously used for washing such fabrics, minute glass particles may become embedded in such articles and transmitted to the exposed skin of the user or wearer thereof. In either event, skin irritation may result.

(b) Although some washing instructions advise purchasers to hand wash glass fiber fabrics separately and rinse the container thoroughly after each washing, such purchasers are not warned as to the consequences of the failure to observe this advice. Such washing instructions may serve as warnings for the care of the fabric but do not serve as warnings that skin irritation may result.

(c) The Commission concludes therefore that the failure to disclose that skin irritation may result from body contact with glass fiber drapery and curtain fabrics, and clothing or other articles which have been washed with such glass fiber products or in containers previously used for washing such products when that container has not been cleansed of glass particles, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and to divert business from competitors whose products may be washed or handled without the resulting irritation. The Commission further concludes that such practice is violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing this practice is specific and substantial.

§ 413.4 Data, views and arguments concerning the rule.

(a) Some interested parties claimed that the record in this proceeding has not established that severe skin irritation results from the handling of glass fiber curtains, draperies, and fabrics and argued that no rule in the matter is justified. Although the factual information does not show that the handling of, or exposure to the products involved will generally result in immediate severe skin irritation, nevertheless such information is to the effect that exposure to the products involved may cause varying degrees of skin irritation. For example, some industry members and other affected parties, and doctors who presented statements on their behalf, concede that some

skin reaction or discomfort may occur when the products in question are washed or handled. Further, the record is replete with consumer statements relating their experiences with varying degrees of irritation resulting from the exposure of their skin to particles from glass fiber curtains, draperies, and fabrics. The Commission was urged to disregard such consumer statements on the basis that such statements are medically unconfirmed self-diagnoses and hearsay, and thus of little probative value. However, the Commission is of the opinion that these statements, particularly when coupled with the concession of industry members and affected parties that the products involved may cause skin reaction or discomfort, should be given consideration. Such weight as the Commission has given to expressions of consumer experiences in this proceeding is not counter to or mitigated by medical statements in the record since the consumer statements related the varying degrees of irritation experienced by the writers, while the medical statements were primarily directed to showing that the glass particles did not cause severe skin irritation.

(b) It is concluded, therefore, that skin irritation may result from the handling, as by washing, sewing or hanging, of glass fiber draperies, curtains and yard goods and from body contact with clothing or other articles which have been washed with such glass fiber products or in a container previously used for washing such products when that container has not been cleansed of glass particles.

§ 413.5 Purpose of the rule.

The purpose of this rule is to inform all members of the industry and other interested or affected parties of the Commission's position with respect to the problem at hand and, in the public interest, to eliminate the unlawful deception and unfair competition resulting from the failure to make the disclosure required by the rule.

THE RULE

§ 413.6 The rule.

The Commission hereby promulgates, as a Trade Regulation Rule, its

conclusions and determination that in connection with the sale or offering for sale of glass fiber curtains and draperies and glass fiber curtain and drapery fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to fail to disclose, clearly and conspicuously, by tag or label affixed to the products with such permanence as to remain thereon until sale to purchasers, and on containers in which the products are delivered to purchasers, that skin irritation may result:

(a) To the exposed skin of persons handling such glass fiber products; and

(b) From body contact with clothing or other articles, such as bed sheets, which have been washed (1) with such glass fiber products, or (2) in a container previously used for washing such glass fiber products unless the glass particles have been removed from such container by cleaning.

PART 414—DECEPTION AS TO TRANSISTOR COUNT OF RADIO RECEIVING SETS, INCLUDING TRANSCEIVERS

STATEMENT OF BASIS AND PURPOSE

Sec.

414.1 Basis of the proceeding.

414.2 Purpose of the rule.

414.3 The practice involved.

414.4 Deceptive character of the practice.

414.5 Data, views, and arguments concerning the rule.

THE RULE

414.6 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 33 FR 8446, June 7, 1968, unless otherwise noted.

STATEMENT OF BASIS AND PURPOSE

§ 414.1 Basis of the proceeding.

This proceeding was initiated by the Commission after consideration of complaints by industry members and articles on the subject appearing in trade journals and national publications to the effect that many marketers of the lower priced radio receiving

sets were including in the claimed transistor count for their sets dummy transistors and transistors wired as diodes.

§ 414.2 Purpose of the rule.

The purpose of this rule is to inform all members of the industry and other interested or affected parties of the Commission's position with respect to the practices in question and to aid the Commission in the prevention of practices violative of section 5 of the Federal Trade Commission Act on an equitable and industrywide basis.

§ 414.3 The practice involved.

Marketers of radio receiving sets, especially the less expensive imported sets, have represented that their products contain a specified number or count of transistors when in fact one or more of such transistors are either dummy transistors (nonfunctioning), or perform some function other than the detection, amplification, and reception of radio signals. Often included in the computation of transistor count are transistors which are utilized as diodes or which perform auxiliary or other functions none of which serve to detect, amplify and receive radio signals. Also included in the transistor count computation may be transistors used in parallel or cascade applications which do not improve the performance capabilities of a radio in the detection, amplification and reception of radio signals.

§ 414.4 Deceptive character of the practice.

(a) With the advent of the radio receiving set, the purchasing public acquired a belief that the greater the number of functioning tubes in a radio the better it performs. Great emphasis in advertising and otherwise was placed on tube count. As early as 1942 the Commission found in a litigated case¹ that a substantial portion of the purchasing public believes that the greater the number of tubes in a receiving set, the greater will be its

¹In re Zenith Radio Corp., Docket 4174, 35 FTC 579, petition to review denied 143 F. (2d) 29.

power of detecting, amplifying, and receiving signals. The record of this proceeding shows that transistors are now used in place of vacuum tubes in many radio receiving sets. Great emphasis has now been placed on transistor count. The Commission is of the view that the purchasing public's belief that the greater the number of tubes in a radio the better and more powerful the radio has shifted to a similar belief with respect to the number of transistors.

(b) On the basis of its accumulated knowledge and experience and the record in this proceeding the Commission concludes that the practice of including in the transistor count computation of a radio, transistors which are dummies or which perform a function other than the detection, amplification, and reception of radio signals or which are used in parallel or cascade applications which do not improve the performance capabilities of the radio in the reception, detection, and amplification of radio signals, is deceptive and tends to divert business from competitors who do not misrepresent the transistor count of their products. The Commission further concludes that such practice is violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing this practice is specific and substantial.

§ 414.5 Data, views, and arguments concerning the rule.

(a) Some interested parties argue that the adoption of a rule prohibiting the inclusion in the transistor count of transistors which are not used for detection, amplification, and reception of radio signals is too restrictive; that it excludes from such count transistors which perform a multiplicity of other functions not directly related to detection, amplification, and reception of signals but which are nevertheless necessary to the performance of the set; and that this will discourage development of additional functions in transistor electronic equipment. Transistors are versatile devices, capable of performing various functions in a radio. Their functions include, but are not limited to, use as diodes and rectifiers, and in audio amplification, auto-

matic frequency control, power supply, voltage regulation, and switching from monophonic to stereophonic operations. None of the transistors so utilized, however, perform the functions of detection, amplification, and reception of radio signals.

(b) The Commission would not regard it as deceptive for an advertisement stating the actual number of transistors in a radio set (computed without the inclusion of transistors which function as diodes or which perform functions not directly related to detection, amplification, and reception of radio signals) to contain a further statement to the effect that the set, in addition, contains a stated number of transistors acting as diodes or performing such other functions. The Commission however regards it as deceptive (and thus improper) to include in the transistor count computation, transistors which are paralleled or cascaded and which perform no function in the detection, amplification, and reception of radio signals or dummy transistors which serve no useful purpose.

THE RULE

§ 414.6 The rule.

The Commission hereby promulgates, as a Trade Regulation Rule, its conclusions and determination that in connection with the sale or offering for sale of radio receiving sets (including transceivers), in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to represent directly or by implication, that any such radio sets contain a specified number of transistors when one or more of such transistors:

(a) Are dummy transistors, (b) do not perform the recognized and customary functions of radio set transistors in the detection, amplification, and reception of radio signals, or (c) are used in parallel or cascade applications which do not improve the performance capabilities of such sets in the reception, detection, and amplification of radio signals: *Provided, however*, That nothing in this rule should be construed to prohibit, in connection

with a statement as to the actual transistor count (computed without inclusion of transistors which do not perform the functions of detection, amplification, and reception of radio signals), a further statement to the effect that the sets in addition contain one or more transistors acting as diodes or performing auxiliary or other functions when such is the fact (e.g., "6 transistors plus one diode").

PART 417—FAILURE TO DISCLOSE THE LETHAL EFFECTS OF INHALING QUICK-FREEZE AEROSOL SPRAY PRODUCTS USED FOR FROSTING COCKTAIL GLASSES

STATEMENT OF BASIS AND PURPOSE

Sec.

- 417.1 Basis of the proceeding.
- 417.2 The practice involved.
- 417.3 Deceptive character of the practice.
- 417.4 Data, views, and arguments concerning the rule.
- 417.5 Purpose of the rule.

THE RULE

417.6 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

SOURCE: 34 FR 2417, Feb. 20, 1969, unless otherwise noted.

STATEMENT OF BASIS AND PURPOSE

§ 417.1 Basis of the proceeding.

This proceeding was initiated by the Commission on receipt of information showing that deaths had been caused by the inhaling of aerosol spray products sold for the purpose of frosting cocktail glasses.

§ 417.2 The practice involved.

Marketers of aerosol spray products designed for frosting cocktail glasses, engaged in the sale of such products in commerce, as "commerce" is defined in the Federal Trade Commission Act, have failed to caution purchasers that death may result from inhaling this product.

§ 417.3 Deceptive character of the practice.

(a) Aerosol spray products designed for frosting cocktail glasses contain Fluorocarbon 12 (Dichlorodifluoro-

methane) which if inhaled in a concentrated amount may cause injury or death. Marketers, in the labeling of such products, have failed to provide a clear and conspicuous warning to the purchaser of the harmful effects of inhaling the product.

(b) The Commission concludes therefore that the failure to disclose that serious harm or death may result from inhaling quick-freeze aerosol spray has the capacity and tendency to mislead and deceive purchasers and prospective purchasers. The Commission further concludes that such practice is violative of section 5 of the Federal Trade Commission Act, and that the public interest in preventing this practice is specific and substantial.

§ 417.4 Data, views, and arguments concerning the rule.

Some industry representatives asserted that the warning statement is unreasonable because the product is harmless when used as directed. Although recognizing that the problem involves a misuse of a product, since the record establishes that in several cases direct inhalation of quick-freeze aerosol spray, albeit intentional, has resulted in death, the Commission concludes that it is in the public interest to caution purchasers who may not otherwise be aware of the lethal effects of inhaling the product.

§ 417.5 Purpose of the rule.

The purpose of this rule is to inform all members of the industry and other interested or affected parties of the Commission's position with respect to the problem at hand and, in the public interest, to eliminate the unlawful deception resulting from the failure to make the disclosure required by the rule.

THE RULE

§ 417.6 The rule.

The Commission hereby promulgates, as a Trade Regulation Rule, its conclusion and determination that in connection with the sale or offering for sale in commerce, as "commerce" is defined in the Federal Trade Commission Act, of quick-freeze aerosol spray

products containing Fluorocarbon 12 (Dichlorodifluoromethane) designed for the frosting of beverage glasses it is an unfair or deceptive act or practice to fail to provide a clear and conspicuous warning on the labels of such products, that the contents thereof should not be inhaled in concentrated form and that injury or death may result from such inhalation. Examples of proper warning statements include:

(1) "WARNING: Use only as directed—inhalation of the concentrated vapors of this product is harmful and may cause death."

(2) "WARNING: Use only as directed—misuse of this product by inhaling its concentrated vapors is harmful and may cause death."

PART 418—DECEPTIVE ADVERTISING AND LABELING AS TO LENGTH OF EXTENSION LADDERS

STATEMENT OF BASIS AND PURPOSE

Sec.

418.1 Basis of the proceeding.

418.2 Purpose of the rule.

418.3 The practice involved.

418.4 Data, views and arguments concerning the rule.

418.5 Deceptive character of the practice.

THE RULE

418.6 The rule.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58, unless otherwise noted.

SOURCE: 34 FR 929, June 22, 1969, unless otherwise noted.

STATEMENT OF BASIS AND PURPOSE

§ 418.1 **Basis of the proceeding.**

This proceeding was initiated by the Commission after consideration of complaints by the consuming public and advertising of extension ladders wherein the sizes of such ladders were represented in terms of the total length of the sections thereof.

§ 418.2 **Purpose of the rule.**

The purpose of the rule is to inform all members of the industry and other interested or affected parties of the Commission's position with respect to the practice in question and to aid the Commission in the prevention of practices violative of section 5 of the Federal Trade Commission Act on an equitable and industrywide basis.

§ 418.3 **The practice involved.**

The record in this proceeding shows that marketers of extension ladders represent the sizes or lengths of their products in terms of the total length of the sections thereof, e.g., a "20-foot" or "20-foot size" extension ladder consists of two 10-foot sections. With few exceptions, no other representation as to size is made in marking, labeling or advertising. It is also shown that in fully extending an extension ladder for use there must be an overlapping of the sections thereof for strength and safety purposes. As a result, footage is lost in such overlapping. Consequently, the maximum working or useful length of an extension ladder is invariably less than the total length of the component sections.

§ 418.4 **Data, views and arguments concerning the rule.**

(a) Some marketers have argued that deception does not result from the use of unqualified size or length representations solely in terms of the total length of the component sections. In support of this they assert that the practice in question dates back over 100 years as a result of marketing ladders on a per-foot price basis and that such practice has been codified by numerous standards and safety codes employed by government and industrial users.

(b) Some marketers also argue that consumers are informed through labels, catalogs, and point-of-sale material, that overlapping is necessary in positioning an extension ladder for use. Not all members of the industry utilize such informative material in connection with the sale of their products. Frequently such information, when provided, is in small print or otherwise so inconspicuous as to be ineffective in informing purchasers of the actual safe useful length.

§ 418.5 **Deceptive character of the practice.**

(a) Due to rising costs in home care and improvements, the number of do-it-yourself consumers has increased sharply. These users need extension ladders in cleaning gutters, painting,

cleaning and for other household maintenance or repair purposes. Although the practice of representing extension ladder lengths in terms of the total of the lengths of the sections thereof has been followed for a substantial period of time and may be understood by tradesmen and industrial and governmental purchasers, there is no showing in this proceeding that this method of representing extension ladder lengths or sizes has acquired a secondary meaning among other consumers of such products. To the contrary, the Commission believes that this method of representing sizes is not understood by the average consumer. The Commission concludes that the present industry practice of representing extension ladder sizes or lengths tends to mislead the general consuming public into the erroneous belief that such represented sizes or lengths are the maximum working or useful lengths of the products so described.

(b) Although it appears that some industry members provide overlapping figures, it is shown that such disclosures are usually inadequate or so inconspicuous as to be of no value in curing the inherent deceptive tendency present when the primary emphasis in size or length representations is on the total length of the component sections.

(c) On the basis of the entire record and the Commission's accumulated experience with size or length representations the Commission concludes that the practice of representing the lengths of extension ladders solely in terms of the total length of the component sections thereof is deceptive and tends to divert business from competitors who conspicuously disclose the working or usable length of their products. The Commission also concludes that such practice is violative of section 5 of the Federal Trade Commission Act and that the public interest in preventing this practice is specific and substantial.

(d) The Commission further concludes that the deception resulting from the use of unqualified size or length representations in terms of the total length of the component sections of an extension ladder would be re-

moved and the public interest fully protected by a statement clearly and conspicuously showing the basis of such length calculation when accompanied by a clear and conspicuous disclosure of the maximum working or useful length of the ladder so described.

THE RULE

§ 418.6 The rule.

Accordingly, for the purpose of preventing such unlawful practice, the Commission hereby promulgates, as a Trade Regulation Rule, its conclusion and determination that in connection with the sale of extension ladders in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice to represent, directly or by implication, the size or length of any such product in terms of the total length of the component sections thereof, in advertising, labeling marking or otherwise, unless—

(a) Such size or length representation is accompanied by the words "total length of sections" or words or terms of similar import clearly indicating the basis of the representation; and

(b) Such size or length representation is accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the maximum length of such product when fully extended for use (i.e., excluding footage lost in overlapping), and by an explanation of the basis for such representation.

Examples of proper length representations when the product consists of two ten foot sections are—

"maximum working length 17, total length of sections 20"
or
"17' extension ladder".

PART 419—GAMES OF CHANCE IN THE FOOD RETAILING AND GASOLINE INDUSTRIES

§ 419.1 The Rule.

The Commission, on the basis of the findings made by it in this proceeding,

as set forth in the accompanying Statement of Basis and Purpose, hereby promulgates as a Trade Regulation Rule its determination that in connection with the use of games of chance in the food retailing and gasoline industries, it constitutes an unfair and deceptive act or practice for users, promoters, or manufacturers of such games to:

(a) Engage in advertising or other promotions which misrepresent by any means, directly or indirectly, participants' chances of winning any prize.

(b) Engage in any advertising, including newspaper and broadcast media advertising, or other promotions such as store signs, window streamers, banners, or display materials, or issue any game piece if such game piece refers, on the exposed portion thereof, in any manner to prizes or their number or availability which fail to disclose clearly and conspicuously:

(1) The exact number of prizes in each category or denomination to be made available during the game program and the odds of winning each such prize made available, this disclosure, for prizes in the amount or value of \$25 or more, to be revised each week a game extends beyond 30 days to reflect the number of such unredeemed prizes still available and the odds existing of winning each such unredeemed prize; and

(2) The geographic area covered by the game (e.g., "Nation-wide," "Washington, D.C. metropolitan area," etc.); and

(3) The total number of retail outlets participating in the game; and

(4) The scheduled termination date of the game.

(c) Fail to mix, distribute, and disperse all game pieces totally and solely on a random basis throughout the game program and throughout the geographic area covered by the game, and fail to maintain such records as are necessary to demonstrate to the Commission that total randomness was used in such mixing, distribution, and dispersal.

(d) Promote, sell, or use any game which is capable of or susceptible to being solved or "broken" so that winning game pieces or prizes are prede-

termined or preidentified by such methods rather than by random distribution to the participating public.

(e) Fail to post clearly and conspicuously at the conclusion of each game in each individual retail outlet which used the game:

(1) The names and addresses of all persons who redeemed a prize in the individual participating retail outlet, and the amount or value of each prize;

(2) The total number of game pieces distributed in all participating retail outlets;

(3) The total number of prizes in each category or denomination which were made available in all participating retail outlets; and

(4) The total number of prizes in each category or denomination which were awarded in all participating retail outlets.

The information required by paragraphs (e) (2), (3), and (4) of this section, as well as a complete list of the names and addresses of winners of a game, is required to be retained in the records of the game promoter for a period of not less than three (3) years. Upon reasonable request, such information shall be made immediately available to the Commission and its staff for inspection.

(f) Promote or use any new game without a break in time between the new game and any game previously employed in the same retail establishment equivalent to the duration of the game previously employed, or 30 days, whichever is less.

(g) Terminate any game, regardless of the scheduled termination date, prior to the distribution of all game pieces to the participating public.

(h) Add additional winning game pieces during the course of a game, or in any manner replenish the prize structure of a game in progress.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[34 FR 13302, Aug. 16, 1969, as amended at 46 FR 36840, July 16, 1981]

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

Sec.

- 423.1 Definitions.
- 423.2 Terminology.
- 423.3 What this regulation does.
- 423.4 Who is covered.
- 423.5 Unfair or deceptive acts or practices.
- 423.6 Textile wearing apparel.
- 423.7 Certain piece goods.
- 423.8 Exemptions.
- 423.9 Conflict with flammability standards.
- 423.10 Stayed or invalid parts.

APPENDIX A—GLOSSARY OF STANDARD TERMS

SOURCE: 48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983, unless otherwise noted.

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

§ 423.1 Definitions.

(a) "Care label" means a permanent label or tag, containing regular care information and instructions, that is attached or affixed in such a manner that it will not become separated from the product and will remain legible during the useful life of the product.

(b) "Certain Piece Goods" means textile products sold by the piece from bolts or rolls for the purpose of making home sewn textile wearing apparel. This includes remnants, the fiber content of which is known, that are cut by or for a retailer but does not include manufacturers' remnants, up to ten yards long, that are clearly and conspicuously marked "pound goods" or "fabrics of undetermined origin" (i.e., fiber content is not known and cannot be easily ascertained) and trim, up to five inches wide.

(c) "Dryclean" means a commercial process by which soil is removed from products or specimens in a machine which uses any common organic solvent (e.g. petroleum, perchlorethylene, fluorocarbon). The process may also include adding moisture to the solvent, up to 75% relative humidity, hot tumble drying up to 160 degrees F (71 degrees C) and restoration by steam press or steam-air finishing.

(d) "Machine Wash" means a process by which soil is removed from products in a specially designed machine using water, detergent or soap and agitation. When no temperature is given, e.g., "warm" or "cold," hot

water up to 150 degrees F (66 degrees C) can be regularly used.

(e) "Regular Care" means customary and routine care, not spot care.

(f) "Textile Product" means any commodity, woven, knit or otherwise made primarily of fiber, yarn or fabric and intended for sale or resale, requiring care and maintenance to effectuate ordinary use and enjoyment.

(g) "Textile Wearing Apparel" means any finished garment or article of clothing made from a textile product that is customarily used to cover or protect any part of the body, including hosiery, excluding footwear, gloves, hats or other articles used exclusively to cover or protect the head or hands.

§ 423.2 Terminology.

(a) Any appropriate terms may be used on care labels or care instructions so long as they clearly and accurately describe regular care procedures and otherwise fulfill the requirements of this regulation.

(b) Any appropriate symbols may be used on care labels or care instructions, in addition to the required appropriate terms so long as the terms fulfill the requirements of this regulation.

(c) The terminology set forth in Appendix A may be used to fulfill the requirements of this regulation.

§ 423.3 What this regulation does.

This regulation requires manufacturers and importers of textile wearing apparel and certain piece goods, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, to provide regular care instructions at the time such products are sold to purchasers through the use of care labels or other methods described in this rule.

§ 423.4 Who is covered.

Manufacturers and importers of textile wearing apparel and certain piece goods are covered by this regulation. This includes any person or organization that directs or controls the manufacture or importation of covered products.

§ 423.5 Unfair or deceptive acts or practices.

(a) *Textile wearing apparel and certain piece goods.* In connection with the sale, in or affecting commerce, of textile wearing apparel and certain piece goods, it is an unfair or deceptive act or practice for a manufacturer or importer:

(1) To fail to disclose to a purchaser, prior to sale, instructions which prescribe a regular care procedure necessary for the ordinary use and enjoyment of the product;

(2) To fail to warn a purchaser, prior to sale, when the product cannot be cleaned by any cleaning procedure, without being harmed;

(3) To fail to warn a purchaser, prior to sale, when any part of the prescribed regular care procedure, which a consumer or professional cleaner could reasonably be expected to use, would harm the product or others being cleaned with it;

(4) To fail to provide regular care instructions and warnings, except as to piece goods, in a form that can be referred to by the consumer throughout the useful life of the product;

(5) To fail to possess, prior to sale, a reasonable basis for all regular care information disclosed to the purchaser.

(b) *Violations of this regulation.* The Commission has adopted this regulation to prevent the unfair or deceptive acts or practices, defined in paragraph (a) of this Section. Each manufacturer or importer covered by this regulation must comply with the requirements in §§ 423.2 and 423.6 through 423.8 of this regulation. Any manufacturer or importer who complies with the requirements of §§ 423.2 and 423.6 through 423.8 does not violate this regulation.

(Approved by the Office of Management and Budget under control number 3084-0046)

§ 423.6 Textile wearing apparel.

This section applies to textile wearing apparel.

(a) Manufacturers and importers must attach care labels so that they can be seen or easily found when the product is offered for sale to consumers. If the product is packaged, displayed, or folded so that customers

cannot see or easily find the label, the care information must also appear on the outside of the package or on a hang tag fastened to the product.

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a drycleaning instruction. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a drycleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. If either washing or drycleaning can be used on the product, the label need have only one of these instructions. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed both by washing and by drycleaning, the label might say "Do not wash—do not dryclean," or "Cannot be successfully cleaned."] The instructions for washing and drycleaning are as follows:

(1) *Washing, drying, ironing, bleaching and warning instructions* must follow these requirements:

(i) *Washing.* The label must state whether the product should be washed by hand or machine. The label must also state a water temperature that may be used. However, if the regular use of hot water will not harm the product, the label need not mention any water temperature. [For example, "Machine wash" means hot, warm or cold water can be used.]

(ii) *Drying.* The label must state whether the product should be dried by machine or by some other method. If machine drying is called for, the label must also state a drying temperature that may be used. However, if the regular use of a high temperature will not harm the product, the label need not mention any drying temperature. [For example, "Tumble dry" means that a high, medium, or low temperature setting can be used.]

(iii) *Ironing.* Ironing must be mentioned on a label only if it will be needed on a regular basis to preserve the appearance of the product, or if it is required under paragraph (b)(1)(v)

of this section, *Warnings*. If ironing is mentioned, the label must also state an ironing temperature that may be used. However, if the regular use of a hot iron will not harm the product, the label need not mention any ironing temperature.

(iv) *Bleaching*. (A) If all commercially available bleaches can safely be used on a regular basis, the label need not mention bleaching.

(B) If all commercially available bleaches would harm the product when used on a regular basis, the label must say "No bleach" or "Do not bleach."

(C) If regular use of chlorine bleach would harm the product, but regular use of a non-chlorine bleach would not, the label must say "Only non-chlorine bleach, when needed."

(v) *Warnings*. (A) If there is any part of the prescribed washing procedure which consumers can reasonably be expected to use that would harm the product or others being washed with it in one or more washings, the label must contain a warning to this effect. The warning must use words "Do not," "No," "Only," or some other clear wording. [For example, if a shirt is not colorfast, its label should state "Wash with like colors" or "Wash separately." If a pair of pants will be harmed by ironing, its label should state "Do not iron."]

(B) Warnings are not necessary for any procedure that is an alternative to the procedure prescribed on the label. [For example, if an instruction states "Dry flat," it is not necessary to give the warning "Do not tumble dry."]

(2) *Drycleaning*.—(i) *General*. If a drycleaning instruction is included on the label, it must also state at least one type of solvent that may be used. However, if all commercially available types of solvent can be used, the label need not mention any types of solvent. The terms "Drycleanable" or "Commercially Dryclean" may not be used in an instruction. [For example, if drycleaning in perchlorethylene would harm a coat, the label might say "Professionally dryclean: fluorocarbon or petroleum."]

(ii) *Warnings*. (A) If there is any part of the drycleaning procedure which consumers or drycleaners can

reasonably be expected to use that would harm the product or others being cleaned with it, the label must contain a warning to this effect. The warning must use the words "Do not," "No," "Only," or some other clear wording. [For example, the drycleaning process normally includes moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160 degrees F and restoration by steam press or steam-air finish. If a product can be drycleaned in all solvents but steam should not be used, its label should state "Professionally dryclean. No steam."]

(B) Warnings are not necessary to any procedure which is an alternative to the procedure prescribed on the label. [For example, if an instruction states "Professionally dryclean, fluorocarbon," it is not necessary to give the warning "Do not use perchlorethylene."]

(c) A manufacturer or importer must establish a reasonable basis for care information by processing prior to sale:

(1) Reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions on the label, including instructions when silence has a meaning. [For example, if a shirt is labeled "Machine wash. Tumble dry. Cool iron," the manufacturer or importer must have reliable proof that the shirt is not harmed when cleaned by machine washing (in hot water), with any type of bleach, tumble dried (at a high setting), and ironed with a cool iron]; or

(2) Reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label. However, the manufacturer or importer need not have proof of harm when silence does not constitute a warning. [For example, if a shirt is labeled "Machine wash warm. Tumble dry medium", the manufacturer need not have proof that the shirt would be harmed if washed in hot water or dried on high setting]; or

(3) Reliable evidence, like that described in paragraph (c) (1) or (2) of this section, for each component part of the product; or

(4) Reliable evidence that the product or a fair sample of the product was successfully tested. The tests may simulate the care suggested or warned against on the label; or

(5) Reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or

(6) Other reliable evidence.

§ 423.7 Certain piece goods.

This section applies to certain piece goods.

(a) Manufacturers and importers of certain piece goods must provide care information clearly and conspicuously on the end of each bolt or roll.

(b) Care information must say what regular care is needed for the ordinary use of the product, pursuant to the instructions set forth in § 423.6. Care information on the end of the bolt need only address information applicable to the fabric.

§ 423.8 Exemptions.

(a) Any item of textile wearing apparel, without pockets, that is totally reversible (i.e., the product is designed to be used with either side as the outer part or face) is exempt from the care label requirement.

(b) Manufacturers or importers can ask for an exemption from the care label requirement for any other textile wearing apparel product or product line, if the label would harm the appearance or usefulness of the product. The request must be made in writing to the Secretary of the Commission. The request must be accompanied by a labeled sample of the product and a full statement explaining why the request should be granted.

(c) If an item is exempt from care labeling under paragraph (a) or (b), of this section the consumers still must be given the required care information for the product. However, the care information can be put on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

(d) Manufacturers and importers of products covered by § 423.5 are exempt from the requirement for a permanent care label if the product

can be cleaned safely under the harshest procedures. This exemption is available only if there is reliable proof that all of the following washing and drycleaning procedures can safely be used on a product:

- (1) Machine washing in hot water;
- (2) Machine drying at a high setting;
- (3) Ironing at a hot setting;
- (4) Bleaching with all commercially available bleaches;

(5) Drycleaning with all commercially available solvents. In such case, the statement "wash or dry clean, any normal method" must appear on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the statement before buying the product.

If a product meets the requirements outlined above, it is automatically exempt from the care label requirement. It is not necessary to file a request for this exemption.

(e) Manufacturers and importers need not provide care information with products sold to institutional buyers for commercial use.

(f) All exemption granted under § 423.1(c) (1) or (2) or the Care Labeling Rule issued on December 9, 1971, will continue to be in effect if the product still meets the standards on which the original exemption was based. Otherwise, the exemption is automatically revoked.

§ 423.9 Conflict with flammability standards.

If there is a conflict between this regulation and any regulations issued under the Flammable Fabrics Act, the Flammable Fabrics regulation govern over this one.

§ 423.10 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

APPENDIX A—GLOSSARY OF STANDARD TERMS

1. *Washing, Machine Methods:*

a. "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation and a machine designed for

this purpose. When no temperature is given, e.g., "warm" or "cold", hot water up to 150° F (66° C) can be regularly used.

b. "Warm"—initial water temperature setting 90° to 110° F (32° to 43° C) (hand comfortable).

c. "Cold"—initial water temperature setting same as cold water tap up to 85° F (29° C).

d. "Do not have commercially laundered"—do not employ a laundry which uses special formulations, sour rinses, extremely large loads or extremely high temperatures or which otherwise is employed for commercial, industrial or institutional use. Employ laundering methods designed for residential use or use in a self-service establishment.

e. "Small load"—smaller than normal washing load.

f. "Delicate cycle" or "gentle cycle"—slow agitation and reduced time.

g. "Durable press cycle" or "permanent press cycle"—cool down rinse or cold rinse before reduced spinning.

h. "Separately"—alone.

i. "With like colors"—with colors of similar hue and intensity.

j. "Wash inside out"—turn product inside out to protect face of fabric.

k. "Warm rinse"—initial water temperature setting 90° to 110° F (32° to 43° C).

l. "Cold rinse"—initial water temperature setting same as cold water tap up to 85° F (29° C).

m. "Rinse thoroughly"—rinse several times to remove detergent, soap, and bleach.

n. "No spin" or "Do not spin"—remove material start of final spin cycle.

o. "No wring" or "Do not wring"—do not use roller wringer, nor wring by hand.

2. Washing, Hand Methods:

a. "Hand wash"—a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap, and gentle squeezing action. When no temperature is given, e.g., "warm" or "cold", hot water up to 150° F (66° C) can be regularly used.

b. "Warm"—initial water temperature 90° to 110° F (32° to 43° C) (hand comfortable).

c. "Cold"—initial water temperature same as cold water tap up to 85° F (29° C).

d. "Separately"—alone.

e. "With like colors"—with colors of similar hue and intensity.

f. "No wring or twist"—handle to avoid wrinkles and distortion.

g. "Rinse thoroughly"—rinse several times to remove detergent, soap, and bleach.

h. "Damp wipe only"—surface clean with damp cloth or sponge.

3. Drying, All Methods:

a. "Tumble dry"—use machine dryer. When no temperature setting is given, machine drying at a hot setting may be regularly used.

b. "Medium"—set dryer at medium heat.

c. "Low"—set dryer at low heat.

d. "Durable press" or "Permanent press"—set dryer at permanent press setting.

e. "No heat"—set dryer to operate without heat.

f. "Remove promptly"—when items are dry, remove immediately to prevent wrinkling.

g. "Drip dry"—hang dripping wet with or without hand shaping and smoothing.

h. "Line dry"—hang damp from line or bar in or out of doors.

i. "Line dry in shade"—dry away from sun.

j. "Line dry away from heat"—dry away from heat.

k. "Dry flat"—lay out horizontally for drying.

l. "Block to dry"—reshape to original dimensions while drying.

m. "Smooth by hand"—by hand, while wet, remove wrinkles, straighten seams and facings.

4. Ironing and Pressing:

a. "Iron"—Ironing is needed. When no temperature is given iron at the highest temperature setting may be regularly used.

b. "Warm iron"—medium temperature setting.

c. "Cool iron"—lowest temperature setting.

d. "Do not iron"—item not to be smoothed or finished with an iron.

e. "Iron wrong side only"—article turned inside out for ironing or pressing.

f. "No steam" or "Do not steam"—steam in any form not to be used.

g. "Steam only"—steaming without contact pressure.

h. "Steam press" or "Steam iron"—use iron at steam setting.

i. "Iron damp"—articles to be ironed should feel moist.

j. "Use press cloth"—use a dry or a damp cloth between iron and fabric.

5. Bleaching:

a. "Bleach when needed"—all bleaches may be used when necessary.

b. "No bleach" or "Do not bleach"—no bleaches may be used.

c. "Only non-chlorine bleach, when needed"—only the bleach specified may be used when necessary. Chlorine bleach may not be used.

6. Washing or Drycleaning:

a. "Wash or dryclean, any normal method"—can be machine washed in hot water, can be machine dried at a high setting, can be ironed at a hot setting, can be bleached with all commercially available bleaches and can be drycleaned with all commercially available solvents.

7. Drycleaning, All Procedures:

a. "Dryclean"—a process by which soil may be removed from products or specimens in a machine which uses any common organic solvent (for example, petroleum, perchlorethylene, fluorocarbon) located in any commercial establishment. The process may include moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160° F (71° C) and restoration by steam press or steam-air finishing.

b. "Professionally dryclean"—use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both. Such modifications or special warnings must be included in the care instruction.

c. "Petroleum", "Fluorocarbon", or "Perchlorethylene"—employ solvent(s) specified to dryclean the item.

d. "Short cycle"—reduced or minimum cleaning time, depending upon solvent used.

e. "Minimum extraction"—least possible extraction time.

f. "Reduced moisture" or "Low moisture"—decreased relative humidity.

g. "No tumble" or "Do not tumble"—do not tumble dry.

h. "Tumble warm"—tumble dry up to 120° F (49° C).

i. "Tumble cool"—tumble dry at room temperature.

j. "Cabinet dry warm"—cabinet dry up to 120° F (49° C).

k. "Cabinet dry cool"—cabinet dry at room temperature.

l. "Steam only"—employ no contact pressure when steaming.

m. "No steam" or "Do not steam"—do not use steam in pressing, finishing, steam cabinets or wands.

8. *Leather and Suede Cleaning:*

a. "Leather clean"—have cleaned only by a professional cleaner who uses special leather or suede care methods.

[48 FR 22743, May 20, 1983; 48 FR 24868, June 3, 1983; 48 FR 27225, June 14, 1983]

PART 424—RETAIL FOOD STORE ADVERTISING AND MARKETING PRACTICES

THE RULE AND ITS APPLICATION

Sec.

424.1 The Rule.

424.2 The application of § 424.1.

THE RULE AND ITS APPLICATION

§ 424.1 The Rule.

(a) The Commission, on the basis of the findings made by it in this proceeding, as set forth in the accompa-

nying Statement of Basis and Purpose, hereby promulgates as a trade regulation rule its determination that:

(b) In connection with the sale or offering for sale by retail foodstores of food and grocery products or other merchandise, subject to the jurisdictional requirements of sections 5 and 12 of the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice to:

(1) (i) Offer any such products for sale at a stated price, by means of any advertisement disseminated in an area served by any of its stores which are covered by the advertisement which do not have such products in stock, and readily available to customers during the effective period of the advertisement. (If not readily available, clear and adequate notice shall be provided that the items are in stock and may be obtained upon request.)

(ii) *Provided, however,* That it shall constitute a defense to a charge under paragraph (b)(1)(i) of this section if the retailer maintains records sufficient to show that the advertised products were ordered in adequate time for delivery and delivered to the stores in quantities sufficient to meet reasonably anticipated demands.

(2) *Fail to make the advertised items conspicuously and readily available for sale at or below the advertised prices.* Unless, in each of the above cases, there is clear and conspicuous disclosure in all such advertisements as to all exception and/or limitations or restrictions with respect to stores, products or prices otherwise included within the advertisements.

NOTE 1: In determining whether this section will be applied the Commission will consider (a) all circumstances surrounding non-delivery of advertised products which were actually ordered in quantities sufficient to meet reasonably anticipated demands but were not delivered due to circumstances beyond the advertiser's control, and (b) all circumstances surrounding failure to make advertised items conspicuously and readily available for sale at or below the advertised prices, but were not made available at those prices due to circumstances beyond the advertiser's control. In such cases, the availability of "rainchecks" will also be considered by the Commission as relevant. However, the existence of a "raincheck"

policy, in and of itself, will not be considered as compliance with this section.

NOTE 2: General disclaimers in advertising relating to product availability will not be considered to be in compliance with the disclosure provisions of this section. Examples of such general disclaimers would be:

(a) "Not all items available at all stores."

(b) A statement that a particular item or group of items is "Available at most stores".

NOTE 3: Specific clear and conspicuous disclaimers in advertising relating to product availability only in those stores possessing particular facilities will be considered to be in compliance with the disclosure provisions of paragraph (b)(1)(i) of this section. An example of such a disclaimer would be:

"Available only at stores featuring delicatessen departments."

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

(36 FR 8781, May 13, 1971)

§ 424.2 The application of § 424.1.

(a) The Commission has noted that the public record contains a number of suggestions that the application of a rule of this nature should be extended so as to cover all retail establishments, or to specific types of retailers such as drugstores, furniture stores, clothing stores, appliance stores. The latter suggestions were apparently generated by unhappy consumer experiences. The Commission has concluded that the public record of this proceeding would not support an extension of the applicability of § 424.1 of this part beyond retail foodstores.

(b) However, while the applicability of § 424.1 of this part itself is restricted to retail foodstores, the Commission wishes to take this opportunity to announce that the legal principles inherent in § 424.1 of this part are in general applicable to the advertising of other commodities. Consequently, in the future the Commission will consider matters involving unavailability and mispricing of other advertised commodities in that spirit.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

(36 FR 8781, May 13, 1971)

PART 425—USE OF NEGATIVE OPTION PLANS BY SELLERS IN COMMERCE

§ 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods

and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) That aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(ii) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;

(iii) The right of a contract-complete subscriber to cancel his membership at any time;

(iv) Whether billing charges will include an amount for postage and handling;

(v) A disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the seller;

(vi) A disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;

(vii) The frequency with which the announcements and forms will be sent to the subscriber and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by paragraph (a)(3) of this section:

(i) An announcement identifying the selection;

(ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not

want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller shall mail the announcement and form either at least twenty (20) days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail his form.

(b) In connection with the sale or distribution of goods and merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, it shall constitute an unfair method of competition and an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

(1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the Postal Service or the subscriber postage adequate to return such selection to the seller, when:

(i) The selection is sent to a subscriber whose form indicating that he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) Such form is received by the seller after the return date, but has been mailed by the subscriber and postmarked at least 3 days prior to the return date;

(iii) Prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a canceling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to section 3009 of the Postal Reorgani-

zation Act of 1970, as adopted by the Federal Trade Commission in its public notice, dated September 11, 1970;

(iv) The announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in paragraphs (b)(1)(i) through (iv) of this section, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to his account.

(3) Refuse to ship within 4 weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of his membership due to the seller's failure to provide the subscriber with his originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

NOTE: The Commission is aware of the fact that many of the consumer complaints received during the course of the proceeding involve allegations of erroneous or unfair billing practices of a type which would be covered by its proposed trade regulation rule involving billing practices arising out of the administration of customer accounts by credit card issuers and other retail establishments, which proceeding has been postponed indefinitely as a result of and for the reasons stated in the Commission's announcement dated January 7, 1971. In view of the fact that the problems encountered

by users of the negative option system or merchandising are no different from those contemplated by the billing practices proceeding which was designed to be applicable to all sellers similarly situated, the Commission has not seen fit to include provisions governing such practices in this part, but would instead visualize that any subsequent rule or statute on the subject would be equally applicable to the members of this industry. In the meantime, abuses in this area will be dealt with on a case-by-case basis.

(c) For the purposes of this part:

(1) "Negative option plan" refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.

(2) "Subscriber" means any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.

(3) "Contract-complete subscriber" refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a negative option plan.

(4) "Promotional material" refers to an advertisement containing or accompanying any device or material which a prospective subscriber sends to the seller to request acceptance or enrollment in a negative option plan.

(5) "Selection" refers to the merchandise identified by a seller under any negative option plan as the merchandise which the subscriber will receive and be billed for, unless by the date, or within the period specified by the seller, the subscriber instructs the seller not to send such merchandise.

(6) "Announcement" refers to any material sent by a seller using a nega-

tive option plan in which the selection is identified and offered to subscribers.

(7) "Form" refers to any form which the subscriber returns to the seller to instruct the seller not to send the selection.

(8) "Return date" refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) "Mailing date" refers to the time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of the selection.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[38 FR 4896; Feb. 22, 1973; 38 FR 6991, Mar. 15, 1973]

PART 429—COOLING-OFF PERIOD FOR DOOR-TO-DOOR SALES

§ 429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(b) Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLA-

TION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO [Name of seller], AT [address of seller's place of business] NOT LATER THAN MIDNIGHT OF ----- (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date) _____

(Buyer's signature) _____

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

NOTE 1: *Definitions.* For the purposes of this section the following definitions shall apply:

(a) *Door-to-Door Sale*--A sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1635) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(5) In which the buyer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion; or

(6) Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.

(b) *Consumer Goods or Services*--Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.

(c) *Seller*--Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of Business*--The main or permanent branch office or local address of a seller.

(e) *Purchase Price*--The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business Day*--Any calendar day except Sunday, or the following business holidays:

New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

NOTE 2: *Effect on State Laws and Municipal Ordinances.*

(a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws which provide the buyer with the right to cancel door-to-door sales transactions. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws or of the ordinances of the political subdivisions of the various States. The Record in the proceedings supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that a consumer who has purchased from a door-to-door seller something he does not want, does not need, or cannot afford, is accorded a unilateral right to rescind, without penalty, his agreement to purchase the goods or services.

(b) This section will not be construed to annual, or exempt any seller from complying with the laws of any State, or with the ordinances of political subdivisions thereof, regulating door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this section. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale which is substantially the same or greater than that provided in this section, or which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer notice of his right to cancel the transaction in substantially the same form and manner provided for in this section, are among those which will be considered directly inconsistent.

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[37 FR 22934, Oct. 26, 1972, as amended at 38 FR 30195, Nov. 1, 1973; 38 FR 31828, Nov. 19, 1973]

PART 432—POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

Sec.

- 432.1 Scope.
- 432.2 Required disclosures.
- 432.3 Standard test conditions.
- 432.4 Optional disclosures.
- 432.5 Prohibited disclosures.
- 432.6 Liability for violation.

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41-58).

SOURCE: 39 FR 15387, May 3, 1974, unless otherwise noted.

§ 432.1 Scope.

(a) Except as provided in paragraph (b) of this section, this part shall apply whenever any power output (in watts or otherwise), power band or power frequency response, or distortion capability or characteristic is represented, either expressly or by implication, in connection with the advertising, sale, or offering for sale, in commerce as "commerce" is defined in the Federal Trade Commission Act, of sound power amplification equipment manufactured or sold for home entertainment purposes, such as for example, radios, record and tape players, radio-phonograph and/or tape combinations, component audio amplifiers and the like.

(b) Representations shall be exempt from this part if all representations of performance characteristics referred to in paragraph (a) of this section clearly and conspicuously disclose a manufacturer's rated power output and that rated output does not exceed two (2) watts (per channel or total).

(c) It is an unfair method of competition and an unfair or deceptive act or practice within the meaning of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) to violate any applicable provision of this part.

§ 432.2 Required disclosures.

Whenever any direct or indirect representation is made of the power output, power band or power frequency response, or distortion characteristics of sound power amplification equipment, the following disclosures shall be made clearly, conspicuously, and more prominently than any other

representations or disclosures permitted under this part:

(a) The manufacturer's rated minimum sine wave continuous average power output, in watts, per channel (if the equipment is designed to amplify two or more channels simultaneously)—

(1) For each load impedance required to be disclosed in paragraph (b) of this section, when measured with resistive load or loads equal to such (nominal) load impedance or impedances, and

(2) Measured with all associated channels fully driven to rated per channel power;

(b) The load impedance or impedances, in Ohms, for which the manufacturer designs the equipment to be used by the consumer;

(c) The manufacturer's rated power band or power frequency response, in Hertz (Hz), for each rated power output required to be disclosed in paragraph (a)(1) of this section; and

(d) The manufacturer's rated percentage of maximum total harmonic distortion at any power level from 250 mW to the rated power output, for each such rated power output and its corresponding rated power band or power frequency response.

§ 432.3 Standard test conditions.

For purposes of performing the tests necessary to make the disclosures required under § 432.2 of this part:

(a) The power line voltage shall be 120 volts AC (230 volts when the equipment is made for foreign sale or use, unless a different nameplate rating is permanently affixed to the product by the manufacturer in which event the latter figure would control), RMS, using a sinusoidal wave containing less than 2 percent total harmonic content. In the case of equipment designed for battery operation only, tests shall be made with the battery power supply for which the particular equipment is designed and such test voltage must be disclosed under the required disclosures of § 432.2 of this part. If capable of both AC and DC battery operation, testing shall be with AC line operation;

(b) The AC power line frequency for domestic equipment shall be 60 Hz and 50 Hz for equipment made for foreign sale or use;

(c) The amplifier shall be preconditioned by simultaneously operating all channels at one-third of rated power output for one hour using a sinusoidal wave at a frequency of 1,000 Hz;

(d) The preconditioning and testing shall be in still air and an ambient temperature of at least 77° F (25° C);

(e) Rated power shall be obtainable at all frequencies within the rated power band without exceeding the rated maximum percentage of total harmonic distortion after input signals at said frequencies have been continuously applied at full rated power for not less than five (5) minutes at the amplifier's auxiliary input, or if not provided, at the phono input.

(f) At all times during warm-up and testing, tone loudness-contour and other controls shall be preset for the flattest response.

§ 432.4 Optional disclosures.

Other operating characteristics and technical specifications not required in § 432.2 of this part may be disclosed: *Provided:*

(a) That any other power output is rated by the manufacturer, is expressed in minimum watts per channel, and such power output representation(s) complies with the provisions of § 432.2 of this part; except that if a peak or other instantaneous power rating, such as music power or peak power, is represented under this section, the maximum percentage of total harmonic distortion (see § 432.2(d) of this part) may be disclosed only at such rated output: *And provided further,*

(b) That all disclosures or representations made under this section are less conspicuously, and prominently made than the disclosures required in § 432.2 of this part; and

(c) The rating and testing methods or standards used in determining such representations are disclosed, and well known and generally recognized by the industry at the time the representations or disclosures are made, are neither intended nor likely to deceive or confuse the consumers and are not

otherwise likely to frustrate the purpose of this part.

NOTE 1: For the purpose of paragraph (b) of this section, optional disclosures will not be considered less prominent if they are either bold faced or are more than two-thirds the height of the disclosures required by § 432.2.

NOTE 2: Use of the asterisk in effecting any of the disclosures required by § 432.2 and permitted by § 432.4 shall not be deemed conspicuous disclosure.

[39 FR 15287, May 3, 1974; 39 FR 17838, May 21, 1974]

§ 432.5 Prohibited disclosures.

No performance characteristics to which this part applies shall be represented or disclosed if they are not obtainable as represented or disclosed when the equipment is operated by the consumer in the usual and normal manner without the use of extraneous aids.

§ 432.6 Liability for violation.

If the manufacturer or, in the case of foreign made products, the importer or domestic sales representative of a foreign manufacturer, of any product covered by this part furnishes the information required or permitted under this part, then any other seller of the product shall not be deemed to be in violation of § 432.5 of this part due to his reliance upon or transmittal of the written representations of the manufacturer or importer if such seller has been furnished by the manufacturer, importer, or sales representative a written certification attesting to the accuracy of the representations to which this part applies: *And provided further,* That such seller is without actual knowledge of the violation contained in said written certification.

PART 433—PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Sec.

433.1 Definitions.

433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

433.3 Exemption of sellers taking or receiving open end consumer credit contracts before November 1, 1977 from requirements of § 433.2(a).

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41, *et seq.*)

§ 433.1 Definitions.

(a) *Person*. An individual, corporation, or any other business organization.

(b) *Consumer*. A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) *Creditor*. A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; *Provided*, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) *Purchase money loan*. A cash advance which is received by a consumer in return for a "Finance Charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.

(e) *Financing a sale*. Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

(f) *Contract*. Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) *Business arrangement*. Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) *Credit card issuer*. A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) *Consumer credit contract*. Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e) of this section.

(j) *Seller*. A person who, in the ordinary course of business, sells or leases goods or services to consumers.

[40 FR 53506, Nov. 18, 1975]

§ 433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

In connection with any sale or lease of goods or services to consumers, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for a seller, directly or indirectly, to:

(a) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

or.

(b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

[40 FR 53506, Nov. 18, 1975; 40 FR 58131, Dec. 15, 1975]

§ 433.3 Exemption of sellers taking or receiving open end consumer credit contracts before November 1, 1977 from requirements of § 433.2(a).

(a) Any seller who has taken or received an open end consumer credit contract before November 1, 1977, shall be exempt from the requirements of 16 CFR Part 433 with respect to such contract provided the contract does not cut off consumers' claims and defenses.

(b) *Definitions.* The following definitions apply to this exemption:

(1) All pertinent definitions contained in 16 CFR 433.1.

(2) Open end consumer credit contract: a consumer credit contract pursuant to which "open end credit" is extended.

(3) "Open end credit": consumer credit extended on an account pursuant to a plan under which a creditor may permit an applicant to make purchases or make loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

(4) Contract which does not cut off consumers' claims and defenses: A consumer credit contract which does not constitute or contain a negotiable instrument, or contain any waiver, limitation, term, or condition which has the effect of limiting a consumer's right to assert against any holder of the contract all legally sufficient claims and defenses which the consumer could assert against the seller of goods or services purchased pursuant to the contract.

[42 FR 19490, Apr. 14, 1977, as amended at 42 FR 46510, Sept. 16, 1977]

PART 435—MAIL ORDER MERCHANDISE

Sec.

435.1 The Rule.

435.2 Definitions.

§ 435.1 The Rule.

In connection with mail order sales in commerce, as "commerce" is de-

fined in the Federal Trade Commission Act it constitutes an unfair method of competition, and an unfair or deceptive act and practice for a seller:

(a)(i) To solicit any order for the sale of merchandise to be ordered by the buyer through the mails unless, at the time of the solicitation, the seller has a reasonable basis to expect that he will be able to ship any ordered merchandise to the buyer: (i) Within that time clearly and conspicuously stated in any such solicitation, or (ii) if no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer.

(2) To provide any buyer with any revised shipping date, as provided in paragraph (b) of this section, unless, at the time any such revised shipping date is provided, the seller has a reasonable basis for making such representation regarding a definite revised shipping date.

(3) To inform any buyer that he is unable to make any representation regarding the length of any delay unless (i) the seller has a reasonable basis for so informing the buyer and (ii) the seller informs the buyer of the reason or reasons for the delay.

(4) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing his use of systems and procedures which assure the shipment of merchandise in the ordinary course of business within any applicable time set forth in this part will create a rebuttable presumption that the seller lacked a reasonable basis for any expectation of shipment within said applicable time.

(b)(1) Where a seller is unable to ship merchandise within the applicable time set forth in paragraph (a)(1) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel his order and receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of his inability to ship within the applicable

time set forth in paragraph (a)(1) of this section, but in no event later than said applicable time.

(i) Any offer to the buyer of such an option shall fully inform the buyer regarding his right to cancel the order and to obtain a prompt refund and shall provide a definite revised shipping date, but where the seller lacks a reasonable basis for providing a definite revised shipping date the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the delay.

(ii) Where the seller has provided a definite revised shipping date which is thirty (30) days or less later than the applicable time set forth in paragraph (a)(1) of this section, the offer of said option shall expressly inform the buyer that, unless the seller receives, prior to shipment and prior to the expiration of the definite revised shipping date, a response from the buyer rejecting the delay and cancelling the order, the buyer will be deemed to have consented to a delayed shipment on or before the definite revised shipping date.

(iii) Where the seller has provided a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or where the seller is unable to provide a definite revised shipping date and therefore informs the buyer that he is unable to make any representation regarding the length of the delay, the offer of said option shall also expressly inform the buyer that his order will automatically be deemed to have been cancelled unless (A) the seller has shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and has received no cancellation prior to shipment, or (B) the seller has received from the buyer within thirty (30) days of said applicable time, a response specifically consenting to said shipping delay. Where the seller informs the buyer that he is unable to make any representation regarding the length of the delay, the buyer shall be expressly informed that, should he consent to an indefinite delay, he will have a continuing right to cancel his order at any time after

the applicable time set forth in paragraph (a)(1) of this section by so notifying the seller prior to actual shipment.

(iv) Nothing in this paragraph shall prohibit a seller who furnishes a definite revised shipping date pursuant to paragraph (b)(1)(i) of this section, from requesting, simultaneously with or at any time subsequent to the offer of an option pursuant to paragraph (b)(1) of this section, the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date in the form of a response from the buyer specifically consenting to said further delay. *Provided, however,* That where the seller solicits consent to an unanticipated indefinite delay the solicitation shall expressly inform the buyer that, should he so consent to an indefinite delay, he shall have a continuing right to cancel his order at any time after the definite revised shipping date by so notifying the seller prior to actual shipment.

(2) Where a seller is unable to ship merchandise on or before the definite revised shipping date provided under paragraph (b)(1)(i) of this section and consented to by the buyer pursuant to paragraph (b)(1)(ii) or (iii) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, a renewed option either to consent to a further delay or to cancel the order and to receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of his inability to ship before the said definite revised date, but in no event later than the expiration of the definite revised shipping date:

Provided, however, That where the seller previously has obtained the buyer's express consent to an unanticipated delay until a specific date beyond the definite revised shipping date, pursuant to paragraph (b)(1)(iv) of this section or to a further delay until a specific date beyond the definite revised shipping date pursuant to paragraph (b)(2) of this section, that date to which the buyer has expressly consented shall supersede the definite revised shipping date for purposes of paragraph (b)(2) of this section.

(i) Any offer to the buyer of said renewed option shall provide the buyer with a new definite revised shipping date, but where the seller lacks a reasonable basis for providing a new definite revised shipping date, the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the further delay.

(ii) The offer of a renewed option shall expressly inform the buyer that, unless the seller receives, prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date, notification from the buyer specifically consenting to the further delay, the buyer will be deemed to have rejected any further delay, and to have cancelled the order if the seller is in fact unable to ship prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date: *Provided, however*, That where the seller offers the buyer the option to consent to an indefinite delay the offer shall expressly inform the buyer that, should he so consent to an indefinite delay, he shall have a continuing right to cancel his order at any time after the old definite revised shipping date or any date superseding the old definite revised shipping date.

(iii) Paragraph (b)(2) of this section shall not apply to any situation where a seller, pursuant to the provisions of paragraph (b)(1)(iv) of this section, has previously obtained consent from the buyer to an indefinite extension beyond the first revised shipping date.

(3) Wherever a buyer has the right to exercise any option under this part or to cancel an order by so notifying the seller prior to shipment, to fail to furnish the buyer with adequate means, at the seller's expense, to exercise such option or to notify the seller regarding cancellation. In any action brought by the Federal Trade Commission alleging a violation of this part, the failure of a respondent-seller:

(i) To provide any offer, notice or option required by this part in writing and by first class mail will create a rebuttable presumption that the respondent-seller failed to offer a clear

and conspicuous offer, notice or option;

(ii) To provide the buyer with the means in writing (by business reply mail or with postage prepaid by the seller) to exercise any option or to notify the seller regarding a decision to cancel, will create a rebuttable presumption that the respondent-seller did not provide the buyer with adequate means pursuant to paragraph (b)(3) of this section.

Nothing in paragraph (b) of this section shall prevent a seller, where he is unable to make shipment within the time set forth in paragraph (a)(1) of this section or within a delay period consented to by the buyer, from deciding to consider the order cancelled and providing the buyer with notice of said decision within a reasonable time after he becomes aware of said inability to ship, together with a prompt refund.

(c) To fail to deem an order cancelled and to make a prompt refund to the buyer whenever:

(1) The seller receives, prior to the time of shipment, notification from the buyer cancelling the order pursuant to any option, renewed option or continuing option under this part;

(2) The seller has, pursuant to paragraph (b)(1)(iii) of this section, provided the buyer with a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or has notified the buyer that he is unable to make any representation regarding the length of the delay and the seller (i) has not shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and (ii) has not received the buyer's express consent to said shipping delay within said thirty (30) days;

(3) The seller is unable to ship within the applicable time set forth in paragraph (b)(2) of this section, and has not received, within the said applicable time, the buyer's consent to any further delay;

(4) The seller has notified the buyer of his inability to make shipment and has indicated his decision not to ship the merchandise;

(5) The seller fails to offer the option prescribed in paragraph (b)(1) of this section and has not shipped the merchandise within the applicable time set forth in paragraph (a)(1) of this section.

(d) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing his use of systems and procedures which assure compliance, in the ordinary course of business, with any requirement of paragraph (b) or (c) of this section will create a rebuttable presumption that the seller failed to comply with said requirements.

NOTE 1: This part shall not apply to subscriptions, such as magazine sales, ordered for serial delivery, after the initial shipment is made in compliance with this part.

NOTE 2: This part shall not apply to orders of seeds and growing plants.

NOTE 3: This part shall not apply to orders made on a collect-on-delivery (C.O.D.) basis.

NOTE 4: This part shall not apply to transactions governed by the Federal Trade Commission's Trade Regulation Rule entitled "Use of Negative Option Plans by Sellers in Commerce", 16 CFR Part 425.

NOTE 5: By taking action in this area, the Federal Trade Commission does not intend to preempt action in the same area, which is not inconsistent with this part, by any State, municipal, or other local government. This part does not annul or diminish any rights or remedies provided to consumers by any State law, municipal ordinance, or other local regulation, insofar as those rights or remedies are equal to or greater than those provided by this part. In addition, this part does not supersede those provisions of any State law, municipal ordinance, or other local regulation which impose obligations or liabilities upon sellers, when sellers subject to this part are not in compliance therewith. This part does supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with this part to the extent that those provisions do not provide a buyer with rights which are equal to or greater than those rights granted a buyer by this part. This part also supersedes those provisions of any State law, municipal ordinance, or other local regulation requiring that a buyer be notified of a right which is the same as a right provided by this part but requiring that a buyer be given notice of this right in a language, form, or manner which is different in any way from that required by this part.

In those instances where any State law, municipal ordinance, or other local regulation contains provisions, some but not all of which are partially or completely superseded by this part, the provisions or portions of those provisions which have not been superseded retain their full force and effect.

NOTE 6: If any provision of this part or its application to any person, partnership, corporation, act or practice is held invalid, the remainder of this part or the application of the provision to any other person, partnership, corporation, act or practice shall not be affected thereby.

NOTE 7: Section 435.1(a)(1) of this part governs all solicitations where the time of solicitation is more than 100 days after promulgation of this part. The remainder of this part governs all transactions where receipt of a properly completed order occurs more than 100 days after promulgation of this part.

(38 Stat. 717, as amended; 15 U.S.C. 41, *et seq.*)

(40 FR 49492, Oct. 22, 1975)

§ 435.2 Definitions.

For purposes of this part:

(a) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(b) "Receipt of a properly completed order" shall mean:

(1) Where there is a credit sale and the buyer has not previously tendered partial payment, the time at which the seller charges the buyer's account;

(2) Where the buyer tenders full or partial payment in the proper amount in the form of cash, check or money order, the time at which the seller has received both said payment and an order from the buyer containing all the information needed by the seller to process and ship the order.

Provided, however, That where the seller receives notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, "receipt of a properly completed order" shall mean the time at which (i) the seller receives notice that a check or money order for the proper amount tendered by the buyer has been honored, (ii) the buyer tenders cash in the proper amount or (iii) the seller receives notice that the buyer qualifies for a credit sale.

(c) "Refund" shall mean:

(1) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order;

(2) Where there is a credit sale:

(i) And the seller is a creditor, a copy of a credit memorandum or the like or an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) And a third party is the creditor, a copy of an appropriate credit memorandum or the like to the third party creditor which will remove the charge from the buyer's account or a statement from the seller acknowledging the cancellation of the order and representing that he has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) And the buyer tendered partial payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order.

(d) "Prompt refund" shall mean:

(1) Where a refund is made pursuant to paragraph (c)(1) or (2)(iii) of this section a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (c)(2) (i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

(e) The "time of solicitation" of an order shall mean that time when the seller has:

(1) Mailed or otherwise disseminated the solicitation to a prospective purchaser,

(2) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or cancelled without incurring substantial expense, or

(3) Made arrangements for the printing of a catalog, brochure or the

like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

(38 Stat. 717, as amended; 15 U.S.C. 41, *et seq.*)

[40 FR 49492, Oct. 22, 1975]

PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING AND BUSINESS OPPORTUNITY VENTURES

Sec.

436.1 The Rule.

436.2 Definitions.

436.3 Severability.

AUTHORITY: 38 Stat. 717, as amended, 15 U.S.C. 41-58.

SOURCE: 43 FR 59614, Dec. 21, 1978, unless otherwise noted.

§ 436.1 The Rule.

In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any franchise, or any relationship which is represented either orally or in writing to be a franchise, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for any franchisor or franchise broker:

(a) To fail to furnish any prospective franchisee with the following information accurately, clearly, and concisely stated, in a legible, written document at the earlier of the "time for making of disclosures" or the first "personal meeting":

(1)(i) The official name and address and principal place of business of the franchisor, and of the parent firm or holding company of the franchisor, if any;

(ii) The name under which the franchisor is doing or intends to do business; and

(iii) The trademarks, trade names, service marks, advertising or other commercial symbols (hereinafter collectively referred to as "marks") which identify the goods, commodities, or services to be offered, sold, or distributed by the prospective franchisee, or

under which the prospective franchisee will be operating.

(2) The business experience during the past 5 years, stated individually, of each of the franchisor's current directors and executive officers (including, and hereinafter to include, the chief executive and chief operating officer, financial, franchise marketing, training and service officers). With regard to each person listed, those persons' principal occupations and employers must be included.

(3) The business experience of the franchisor and the franchisor's parent firm (if any), including the length of time each: (i) Has conducted a business of the type to be operated by the franchisee; (ii) has offered or sold a franchise for such business; (iii) has conducted a business or offered or sold a franchise for a business (A) operating under a name using any mark set forth under paragraph (a)(1)(iii) of this section, or (B) involving the sale, offering, or distribution of goods, commodities, or services which are identified by any mark set forth under paragraph (a)(1)(iii) of this section; and (iv) has offered for sale or sold franchises in other lines of business, together with a description of such other lines of business.

(4) A statement disclosing who, if any, of the persons listed in paragraphs (a) (2) and (3) of this section:

(i) Has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded *nolo contendere* to a felony charge if the felony involved fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(ii) Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action (A) involving allegations of fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or (B) which was brought by a present or former franchisee or franchisees and which involves or involved the

franchise relationship; *Provided, however*, That only material individual civil actions need be so listed pursuant to paragraph (4)(ii) of this section, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(iii) Is subject to any currently effective State or Federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting franchise activities or the franchisor-franchisee relationship, or involving fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A franchisor may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(5) A statement disclosing who, if any, of the persons listed in paragraphs (a) (2) and (3) of this section at any time during the previous 7 fiscal years has:

(i) Filed in bankruptcy;

(ii) Been adjudged bankrupt;

(iii) Been reorganized due to insolvency; or

(iv) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within 1 year after the period that such person held such position in such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto, shall be set forth.

(6) A factual description of the franchise offered to be sold by the franchisor.

(7) A statement of the total funds which must be paid by the franchisee to the franchisor or to a person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party, in order to obtain or commence the franchise operation, such as initial franchise fees, deposits, downpayments, prepaid rent, and equipment and inventory purchases. If all or part of these fees or deposits are returnable under certain conditions, these conditions shall be set forth; and if not returnable, such fact shall be disclosed.

(8) A statement describing any recurring funds required to be paid, in connection with carrying on the franchise business, by the franchisee to the franchisor or to a person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party, including, but not limited to, royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases.

(9) A statement setting forth the name of each person (including the franchisor) the franchisee is directly or indirectly required or advised to do business with by the franchisor, where such persons are affiliated with the franchisor.

(10) A statement describing any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment or the operation of the franchise business which the franchisee is directly or indirectly required by the franchisor to purchase, lease or rent; and if such purchases, leases or rentals must be made from specific persons (including the franchisor), a list of the names and addresses of each such person. Such list may be made in a separate document delivered to the prospective franchisee with the prospectus if the existence of such separate document is disclosed in the prospectus.

(11) A description of the basis for calculating, and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the franchisor or persons affiliated with the franchisor

from suppliers to the prospective franchisee in consideration for goods or services which the franchisor requires or advises the franchisee to obtain from such suppliers.

(12)(i) A statement of all the material terms and conditions of any financing arrangement offered directly or indirectly by the franchisor, or any person affiliated with the franchisor, to the prospective franchisee; and

(ii) A description of the terms by which any payment is to be received by the franchisor from (A) any person offering financing to a prospective franchisee; and (B) any person arranging for financing for a prospective franchisee.

(13) A statement describing the material facts of whether, by the terms of the franchise agreement or other device or practice, the franchisee is:

(i) Limited in the goods or services he or she may offer for sale;

(ii) Limited in the customers to whom he or she may sell such goods or services;

(iii) Limited in the geographic area in which he or she may offer for sale or sell goods or services; or

(iv) Granted territorial protection by the franchisor, by which, with respect to a territory or area, (A) the franchisor will not establish another, or more than any fixed number of, franchises or company-owned outlets, either operating under, or selling, offering, or distributing goods, commodities or services, identified by any mark set forth under paragraph (a)(1)(iii) of this section; or (B) the franchisor or its parent will not establish other franchises or company-owned outlets selling or leasing the same or similar products or services under a different trade name, trademark, service mark, advertising or other commercial symbol.

(14) A statement of the extent to which the franchisor requires the franchisee (or, if the franchisee is a corporation, any person affiliated with the franchisee) to participate personally in the direct operation of the franchise.

(15) A statement disclosing, with respect to the franchise agreement and any related agreements:

(i) The term (i.e., duration of arrangement), if any, of such agreement, and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises;

(ii) The conditions under which the franchisee may renew or extend;

(iii) The conditions under which the franchisor may refuse to renew or extend;

(iv) The conditions under which the franchisee may terminate;

(v) The conditions under which the franchisor may terminate;

(vi) The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor, and the obligations of the franchisee (including lease or sublease obligations) after termination of the franchise by the franchisee and after the expiration of the franchise;

(vii) The franchisee's interest upon termination of the franchise, or upon refusal to renew or extend the franchise, whether by the franchisor or by the franchisee;

(viii) The conditions under which the franchisor may repurchase, whether by right of first refusal or at the option of the franchisor (and if the franchisor has the option to repurchase the franchise, whether there will be an independent appraisal of the franchise, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the franchisee);

(ix) The conditions under which the franchisee may sell or assign all or any interest in the ownership of the franchise, or of the assets of the franchise business;

(x) The conditions under which the franchisor may sell or assign, in whole or in part, its interest under such agreements;

(xi) The conditions under which the franchisee may modify;

(xii) The conditions under which the franchisor may modify;

(xiii) The rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee; and

(xiv) The provisions of any covenant not to compete.

(16) A statement disclosing, with respect to the franchisor and as to the particular named business being offered:

(i) The total number of franchises operating at the end of the preceding fiscal year;

(ii) The total number of company-owned outlets operating at the end of the preceding fiscal year;

(iii) The names, addresses, and telephone numbers of (A) The 10 franchised outlets of the named franchise business nearest the prospective franchisee's intended location; or (B) all franchisees of the franchisor, or (C) all franchisees of the franchisor in the State in which the prospective franchisee lives or where the proposed franchise is to be located, *Provided, however*, That there are more than 10 such franchisees. If the number of franchisees to be disclosed pursuant to paragraph (a)(16)(iii)(B) or (C) of this section exceeds 50, such listing may be made in a separate document delivered to the prospective franchisee with the prospectus if the existence of such separate document is disclosed in the prospectus;

(iv) The number of franchises voluntarily terminated or not renewed by franchisees within, or at the conclusion of, the term of the franchise agreement, during the preceding fiscal year;

(v) The number of franchises reacquired by purchase by the franchisor during the term of the franchise agreement, and upon the conclusion of the term of the franchise agreement, during the preceding fiscal year;

(vi) The number of franchises otherwise reacquired by the franchisor during the term of the franchise agreement, and upon the conclusion of the term of the franchise agreement, during the preceding fiscal year;

(vii) The number of franchises for which the franchisor refused renewal of the franchise agreement or other agreements relating to the franchise during the preceding fiscal year; and

(viii) The number of franchises that were canceled or terminated by the franchisor during the term of the franchise agreement, and upon conclu-

sion of the term of the franchise agreement, during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(16) (v), (vi), (vii), and (viii) of this section, the disclosure statement shall also include a general categorization of the reasons for such reacquisitions, refusals to renew or terminations, and the number falling within each such category, including but not limited to the following: failure to comply with quality control standards, failure to make sufficient sales, and other breaches of contract.

(17) (i) If site selection or approval thereof by the franchisor is involved in the franchise relationship, a statement disclosing the range of time that has elapsed between signing of franchise agreements or other agreements relating to the franchise and site selection, for agreements entered into during the preceding fiscal year; and

(ii) If operating franchise outlets are to be provided by the franchisor, a statement disclosing the range of time that has elapsed between the signing of franchise agreements or other agreements relating to the franchise and the commencement of the franchisee's business, for agreements entered into during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(17) (i) and (ii) of this section, a franchisor may at its option also provide a distribution chart using meaningful classifications with respect to such ranges of time.

(18) If the franchisor offers an initial training program or informs the prospective franchisee that it intends to provide such person with initial training, a statement disclosing:

(i) The type and nature of such training;

(ii) The minimum amount, if any, of training that will be provided to a franchisee; and

(iii) The cost, if any, to be borne by the franchisee for the training to be provided, or for obtaining such training.

(19) If the name of a public figure is used in connection with a recommendation to purchase a franchise, or as a part of the name of the franchise op-

eration, or if the public figure is stated to be involved with the management of the franchisor, a statement disclosing:

(i) The nature and extent of the public figure's involvement and obligations to the franchisor, including but not limited to the promotional assistance the public figure will provide to the franchisor and to the franchisee;

(ii) The total investment of the public figure in the franchise operation; and

(iii) The amount of any fee or fees the franchisee will be obligated to pay for such involvement or assistance provided by the public figure.

(20) (i) A balance sheet (statement of financial position) for the franchisor for the most recent fiscal year, and an income statement (statement of results of operations) and statement of changes in financial position for the franchisor for the most recent 3 fiscal years. Such statements are required to have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant.

Provided, however, That where a franchisor is a subsidiary of another corporation which is permitted under generally accepted accounting principles to prepare financial statements on a consolidated or combined statement basis, the above information may be submitted for the parent if (A) the corresponding unaudited financial statements of the franchisor are also provided, and (B) the parent absolutely and irrevocably has agreed to guarantee all obligations of the subsidiary;

(ii) Unaudited statements shall be used only to the extent that audited statements have not been made, and provided that such statements are accompanied by a clear and conspicuous disclosure that they are unaudited. Statements shall be prepared on an audited basis as soon as practicable, but, at a minimum, financial statements for the first full fiscal year following the date on which the franchisor must first comply with this part shall contain a balance sheet opinion prepared by an independent certified or licensed public accountant, and financial statements for the following fiscal year shall be fully audited.

(21) All of the foregoing information in paragraphs (a) (1) through (20) of this section shall be contained in a single disclosure statement or prospectus, which shall not contain any materials or information other than that required by this part or by State law not preempted by this part. This does not preclude franchisors or franchise brokers from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure statement required by paragraph (a) of this section. This disclosure statement shall carry a cover sheet distinctively and conspicuously showing the name of the franchisor, the date of issuance of the disclosure statement, and the following notice imprinted thereon in upper and lower case bold-face type of not less than 12 point size:

**Information for Prospective Franchisees Required by
Federal Trade Commission**

* * * * *

To protect you, we've required your franchisor to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a franchise is a complicated investment. Take your time to decide. If possible, show your contract and this information to an advisor, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

There may also be laws on franchising in your state. Ask your state agencies about them.

FEDERAL TRADE COMMISSION,
Washington, D.C.

Provided, That the obligation to furnish such disclosure statement shall be deemed to have been met for both the franchisor and the franchise broker if either such party furnishes the prospective franchisee with such disclosure statement.

(22) All information contained in the disclosure statement shall be current as of the close of the franchisor's most recent fiscal year. After the close of each fiscal year, the franchisor shall

be given a period not exceeding 90 days to prepare a revised disclosure statement and, following such 90 days, may distribute only the revised prospectus and no other. The franchisor shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure statement to reflect any material change in the franchisor or relating to the franchise business of the franchisor, about which the franchisor or franchise broker, or any agent, representative, or employee thereof, knows or should know. Each prospective franchisee shall have in his or her possession, at the "time for making of disclosures," the disclosure statement and quarterly revision for the period most recent to the "time for making of disclosures" and available at that time. Information which is required to be audited pursuant to paragraph (a)(20) of this section is not required to be audited for quarterly revisions. *Provided, however*, That the unaudited information be accompanied by a statement in immediate conjunction therewith that clearly and conspicuously discloses that such information has not been audited.

(23) A table of contents shall be included within the disclosure statement.

(24) The disclosure statement shall include a comment which either positively or negatively responds to each disclosure item required to be in the disclosure statement, by use of a statement which fully incorporates the information required by the item. Each disclosure item therein must be preceded by the appropriate heading, as set forth in Note 3 of this part.

(b) To make any oral, written, or visual representation to a prospective franchisee which states a specific level of potential sales, income, gross or net profit for that prospective franchisee, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the franchise is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material

which constitutes a reasonable basis for such representation, and such material is made available to any prospective franchisee and to the Commission or its staff upon reasonable demand.

Provided, further, That in immediate conjunction with such representation, the franchisor shall disclose in a clear and conspicuous manner that such material is available to the prospective franchisee; and *Provided, however,* That no provision within paragraph (b) of this section shall be construed as requiring the disclosure to any prospective franchisee of the identity of any specific franchisee or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further,* That no additional representation as to a prospective franchisee's potential sales, income, or profits may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document whose text accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective franchisee to whom the representation is made shall be furnished with such document no later than the "time for making of disclosures"; *Provided, however,* That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures", the document shall be furnished to the prospective franchisee to whom the representation is made at that "personal meeting";

(4) The following statement is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation and in not less than twelve point upper and lower-case boldface type:

CAUTION

These figures are only estimates of what we think you may earn. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(5) The following information is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation:

(i) The number and percentage of outlets of the named franchise business which are located in the geographic markets that form the basis for any such representation and which are known to the franchisor or franchise broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (b)(5)(i) of this section, *Provided, however,* That any franchisor without prior franchising experience as to the named franchise business so indicate such lack of experience in the document described in paragraph (b)(3) of this section.

Except, That representations of the sales, income or profits of existing franchise outlets need not comply with paragraph (b) of this section.

(c) To make any oral, written or visual representation to a prospective franchisee which states a specific level of sales, income, gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the franchise is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective franchisee and to the Commission or its staff upon reasonable demand,

Provided, however, That in immediate conjunction with such representation, the franchisor discloses in a clear and conspicuous manner that such material is available to the prospective franchisee; and *Provided, further,*

That no provision within paragraph (c) of this section shall be construed as requiring the disclosure to any prospective franchisee of the identity of any specific franchisee or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further*, That no additional representation as to the sales, income, or gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document which accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective franchisee to whom the representation is made shall be furnished with such document no later than the "time for making of disclosures".

Provided, however, That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures," the document shall be furnished to the prospective franchisee to whom the representation is made at that "personal meeting".

(4) The underlying data on which the representation is based have been prepared in accordance with generally accepted accounting principles;

(5) The following statement is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation, and in not less than twelve point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(6) The following information is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation:

(i) The number and percentage of outlets of the named franchise busi-

ness which are located in the geographic markets that form the basis for any such representation and which are known to the franchisor or franchise broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (c)(6)(i) of this section.

Provided, however, That any franchisor without prior franchising experience as to the named franchise business so indicate such lack of experience in the document described in paragraph (c)(3) of this section.

(d) To fail to provide the following information within the document(s) required by paragraphs (b)(3) and (c)(3) of this section whenever any representation is made to a prospective franchisee regarding its potential sales, income, or profits, or the sales, income, gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business:

(1) A cover sheet distinctively and conspicuously showing the name of the franchisor, the date of issuance of the document and the following notice imprinted thereon in upper and lower case boldface type of not less than twelve point size:

INFORMATION FOR PROSPECTIVE FRANCHISEES ABOUT FRANCHISE [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION.

To protect you, we've required the franchisor to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. Then take your time and think it over.

If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law.

There may also be laws on franchising in your State. Ask your State agencies about them.

FEDERAL TRADE COMMISSION,
Washington, D.C.

(2) A table of contents.

Provided, however, That each prospective franchisee to whom the representation is made shall be notified at the "time for making of disclosures" of any material change (about which the franchisor, franchise broker, or any of the agents, representatives, or employees thereof, knows or should know) in the information contained in the document(s) described by paragraphs (b)(3) and (c)(3) of this section.

(e) To make any oral, written, or visual representation for general dissemination (not otherwise covered by paragraph (b) or (c) of this section) which states a specific level of sales, income, gross or net profits, either actual or potential, of existing or prospective outlets (whether franchised or company-owned) of the named franchise business or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material which constitutes a reasonable basis for such representation and which is made available to the Commission or its staff upon reasonable demand;

(2) The underlying data on which each representation of sales, income or profit for existing outlets is based have been prepared in accordance with generally accepted accounting principles;

(3) In immediate conjunction with such representation, there shall be clearly and conspicuously disclosed the number and percentage of outlets of the named franchise business which the franchisor or the franchise broker knows to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(4) In immediate conjunction with each such representation of potential sales, income or profits, the following statement shall be clearly and conspicuously disclosed:

CAUTION

These figures are only estimates; there is no assurance you'll do as well. If you rely

upon our figures, you must accept the risk of not doing as well.

Provided, however, That if such representation is not based on actual experience of existing outlets of the named franchise business, that fact also should be disclosed;

(5) No later than the earlier of the first "personal meeting" or the "time for making of disclosures," each prospective franchisee shall be given a single, legible written document which accurately, clearly and concisely sets forth the following information and materials (and none other than that provided for by this part or by State law not preempted by this part):

(i) The representation, set forth in detail along with the material bases and assumptions therefor;

(ii) The number and percentage of outlets of the named franchise business which the franchisor or the franchise broker knows to have earned or made at least the same sales, income or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(iii) With respect to each such representation of sales, income, or profits of existing outlets, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(iv) With respect to each such representation of potential sales, income, or profits, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

These figures are only estimates. There is no assurance that you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(v) If applicable, a statement clearly and conspicuously disclosing that the franchisor lacks prior franchising experience as to the named franchise business;

(vi) If applicable, a statement clearly and conspicuously disclosing that the franchisor has not been in business long enough to have actual business data;

(vii) A cover sheet, distinctively and conspicuously showing the name of the franchisor, the date of issuance of the document, and the following notice printed thereon in not less than 12 point upper and lower case boldface type:

**INFORMATION FOR PROSPECTIVE FRANCHISEES
ABOUT FRANCHISE [SALES] [INCOME] [PROFIT]
REQUIRED BY THE FEDERAL TRADE COMMISSION**

To protect you, we've required the franchisor to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law. There may also be laws about franchising in your State. Ask your State agencies about them.

FEDERAL TRADE COMMISSION,
Washington, D.C.

(viii) A table of contents;

(6) Each prospective franchisee shall be notified at the "time for making of disclosures" of any material changes that have occurred in the information contained in this document.

(f) To make any claim or representation which is contradictory to the information required to be disclosed by this part.

(g) To fail to furnish the prospective franchisee with a copy of the franchisor's franchise agreement and related agreements with the document, and a copy of the completed franchise and related agreements intended to be executed by the parties at least 5 business days prior to the date the agreements are to be executed.

Provided, however, That the obligations defined in paragraphs (b) through (g) of this section shall be deemed to have been met for both the franchisor and the franchise broker if either such person furnishes the pro-

spective franchisee with the written disclosures required thereby.

(h) To fail to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.

§ 436.2 Definitions.

As used in this part, the following definitions shall apply:

(a) The term "franchise" means any continuing commercial relationship created by any arrangement or arrangements whereby:

(1)(i)(A) a person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(1) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or

(2) Indirectly or directly required or advised to meet the quality standards prescribed by another person (hereinafter "franchisor") where the franchisee operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

(B)(1) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, marketing plan or business affairs; or

(2) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including, but not limited to, the franchisee's business organization, management, marketing plan, promotional activities, or business affairs; *Provided, however,* That assistance in the franchisee's promotional activities shall not, in the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance; or

(ii)(A) A person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined),

goods, commodities, or services which are:

(1) Supplied by another person (hereinafter "franchisor"), or

(2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

(3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(B) The franchisor:

(1) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or

(2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraphs (a)(1)(ii)(B) (1) and (2) of this section; and

(2) The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

(3) Exemptions. The provisions of this part shall not apply to a franchise:

(i) Which is a "fractional franchise"; or

(ii) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly (A) required to do business with by the retailer-grantor or (B) advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(iii) Where the total of the payments referred to in paragraph (a)(2) of this section made during a period from any time before to within 6 months after commencing operation of the franchisee's business, is less than \$500; or

(iv) Where there is no writing which evidences any material term or aspect of the relationship or arrangement.

(4) Exclusions. The term "franchise" shall not be deemed to include any continuing commercial relationship created solely by:

(i) The relationship between an employer and an employee, or among general business partners; or

(ii) Membership in a bona fide "co-operative association"; or

(iii) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

(iv) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(5) Any relationship which is represented either orally or in writing to be a franchise (as defined in this paragraphs (a) (1) and (2) of this section) is subject to the requirements of this part.

(b) The term "person" means any individual, group, association, limited or general partnership, corporation, or any other business entity.

(c) The term "franchisor" means any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (a) of this section.

(d) The term "franchisee" means any person (1) who participates in a franchise relationship as a franchisee, as denoted in paragraph (a) of this section, or (2) to whom an interest in a franchise is sold.

(e) The term "prospective franchisee" includes any person, including any representative, agent, or employee of that person, who approaches or is approached by a franchisor or franchise broker, or any representative, agent, or employee thereof, for the purpose of discussing the establishment, or possible establishment, of a franchise relationship involving such a person.

(f) The term "business day" means any day other than Saturday, Sunday, or the following national holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

(g) The term "time for making of disclosures" means ten (10) business days prior to the earlier of (1) the execution by a prospective franchisee of any franchise agreement or any other agreement imposing a binding legal obligation on such prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a franchise, or (2) the payment by a prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.

(h) The term "fractional franchise" means any relationship, as denoted by paragraph (a) of this section, in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the franchisee.

(i) The term "affiliated person" means a person (as defined in paragraph (b) of this section):

(1) Which directly or indirectly controls, is controlled by, or is under common control with, a franchisor; or

(2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a franchisor; or

(3) Which has, in common with a franchisor, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

(j) The term "franchise broker" means any person other than a franchisor or a franchisee who sells, offers for sale, or arranges for the sale of a franchise.

(k) The term "sale of a franchise" includes a contract or agreement whereby a person obtains a franchise or interest in a franchise for value by purchase, license, or otherwise. This term shall not be deemed to include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee, unless the new contracts or agreements contain material changes from those in effect between the franchisor and franchisee prior thereto.

(l) A "cooperative association" is either (1) an association of producers of agricultural products authorized by section 1 of the Capper-Volstead Act, 7 U.S.C. 291; or (2) an organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers.

(m) The term "fiscal year" means the franchisor's fiscal year.

(n) The terms "material," "material fact," and "material change" shall include any fact, circumstance, or set of conditions which has a substantial likelihood of influencing a reasonable franchisee or a reasonable prospective franchisee in the making of a significant decision relating to a named franchise business or which has any significant financial impact on a franchisee or prospective franchisee.

(o) The term "personal meeting" means a face-to-face meeting between a franchisor or franchise broker (or any agent, representative, or employee

thereof) and a prospective franchisee which is held for the purpose of discussing the sale or possible sale of a franchise.

§ 436.3 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

NOTE 1: The Commission expresses no opinion as to the legality of any practice mentioned in this part. A provision for disclosure should not be construed as condonation or approval with respect to the matter required to be disclosed, nor as an indication of the Commission's intention not to enforce any applicable statute.

NOTE 2: By taking action in this area, the Federal Trade Commission does not intend to annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with the laws or regulations of any State, municipality, or other local government with respect to franchising practices, except to the extent that those laws or regulations are inconsistent with any provision of this part, and then only to the extent of the inconsistency. For the purposes of this part, a law or regulation of any State, municipality, or other local government is not inconsistent with this part if the protection such law or regulation affords any prospective franchisee is equal to or greater than that provided by this part. Examples of provisions which provide protection equal to or greater than that provided by this part include laws or regulations which require more complete record keeping by the franchisor or the disclosure of more complete information to the franchisee.

NOTE 3: [As per § 436.1(a)(24) of this part].

DISCLOSURE STATEMENT

Pursuant to 16 CFR 436.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, the following information is set forth on [name of franchisor] for your examination:

1. Identifying information as to franchisor.
2. Business experience of franchisor's directors and executive officers.
3. Business experience of the franchisor.
4. Litigation history.
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PART 438—PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

Sec.

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APPENDICES—A THROUGH S

AUTHORITY: 38 Stat 717, as amended (15 U.S.C. 41, et seq.).

SOURCE: 43 FR 60796, Dec. 28, 1978, unless otherwise noted.

EFFECTIVE DATE NOTE: At 45 FR 1011, Jan. 4, 1980, the effective date of Part 438 was stayed indefinitely.

§ 438.0 The rule

In connection with the sale or promotion of any course in or affecting commerce, it is an unfair or deceptive act or practice for any school to fail to comply with the requirements set forth in §§ 438.2 through 438.8 of this part.

§ 438.1 Definitions

For the purposes of this part, the following definitions shall apply:

(a) *Prospective student.* A "prospective student" is any person who seeks to enroll in a course but does not include any person whose enrollment has been sponsored or required by a government agency, charitable organization, labor union, school (other than the school in which enrollment is being made), or the person's employer, when that agency, organization, union, school or employer has identified and selected the course to be taken.

(b) *Student.* A "student" is any person who has signed an enrollment contract with a school and not cancelled that contract before the cooling-off period specified in § 438.2 of this part has ended.

(c) *Course.* (1) The term "course" means a residence, correspondence or combination program of study, education, training, or instruction consisting of a series of lessons, and/or classes which are coordinated, arranged, or packaged to constitute a curriculum or program of instruction and sold collectively, so long as the course purports to prepare or qualify individuals, or improve or upgrade the skills individuals need, for employment in any specific occupation, trade, or in job positions requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills.

(2) The term "course" shall not be construed to include high school equivalency courses or general self-improvement courses which do not purport to offer training necessary to obtain employment in a specific skill or trade.

(3) The term "course" shall not be construed to include a program two years in length or longer which consists of accredited college level instruction that culminates in a standard college degree, as defined in 38 U.S.C. 1652(g), as amended.

(4) The term "course" shall not be construed to include any course whose total contract price is less than one hundred dollars (\$100), provided that the student has not enrolled in any other course with that school during the calendar year and that the school

does not offer any other "course" as defined by this paragraph, for one hundred dollars (\$100) or more.

(d) *Total contract price.* The "total contract price" is the total price paid or to be paid by the student for the property or services which are the subject of the enrollment contract, including charges for registration, ancillary services and any finance charges determined in accordance with the Federal Reserve Board's Regulation Z (12 CFR 226.4). Any equipment which the school provides to the student must be included within the total contract price unless the school discloses in the enrollment contract and the notice required by § 438.6 of this rule, the price being charged for the equipment. If the equipment is provided at different points in time during the duration of the contract, the amount being charged for each installment of equipment must be disclosed in the enrollment contract.

(e) *School.* A "school" is any person, partnership or corporation engaged in the operation of a privately owned school, studio, institute, office or other facility which offers residence, correspondence or combination courses.

(f) *Graduate.* A "graduate" is any student who fully completes all of the lessons or classes required by the school and discharges any other requirements or obligations established by the school as prerequisites for completing the full course of study.

(g) *Fail to complete.* Any student who does not fully complete all of the lessons or classes required by the school as constituting the full course of study and who cancels by any of the methods prescribed in § 438.4(a) of the rule shall be deemed to have "failed to complete" his or her course.

(h) *Actively enrolled.* Any student who is neither a graduate nor has failed to complete his or her course of study shall be deemed to be "actively enrolled."

(i) *Base period.* A "base period" is a six-month period from January 1 through June 30, or from July 1 through December 31.

(j) *Most recent base period.* The "most recent base period" is the latest base period, not including any base period that ended within six months

of the time the disclosures are required to be made pursuant to § 438.3(a) of this rule.

(k) *Most recent graduating class.* The "most recent graduating class" is the class of graduates which most recently completed its course, but does not include any graduating class which completed its course within six months of the time the disclosures required by § 438.3(b)(1) are to be made.

(l) *New Course.* A "new course" is any course which has substantially different course content and occupational objectives from any course previously offered by the school and which has been offered for a period of time less than six (6) months since:

(1) The graduation of one class or the completion of one base period, whichever is later, if a residence course; or

(2) The completion of two (2) base periods, if a correspondence school course.

All courses offered by new schools, which otherwise meet the requirements of paragraph (1) (1) or (2) of this section shall be considered to be new courses.

(m) *Combination course.* A "combination course" is any course that consists of both correspondence lessons and residence classes.

(n) *Constructive notice.* A student shall be deemed to have provided "constructive notice" of his or her intention to withdraw from a course:

(1) For residence courses with fixed class schedules or the equivalent portion of a combination course, by failing to attend residence instructional facilities for a period of five consecutive days on which that class meets;

(2) For residence courses without fixed class schedules, or the equivalent portion of a combination course, by failing to attend residence classes or failing to utilize residence instructional facilities for a period of sixty (60) consecutive days;

(3) For correspondence courses of instruction, or the equivalent portion of combination course, by failing to submit a lesson for a period of 120 consecutive days.

(o) *Course with/without a fixed class schedule.* A "course without a fixed class schedule" is a residence course

which does not have precise dates for class admissions, where enrollees do not attend classes by a prearranged schedule, or where there is not a precise graduation date and in which the financial obligation of enrolled students is determined by the number of lessons they have actually attended. Any other residence course shall be deemed to be a "course with a fixed class schedule."

(p) *Enrollment contract.* An "enrollment contract" is any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase a course from a school, provided that the agreement or instrument is entered into after the effective date of this trade regulation rule.

(q) *Job or earnings claim.* A "job or earnings claim" is any general or specific job or earnings claim.

(r) *General job or earnings claim.* A "general job or earnings claim" is any express claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.

(s) *Specific job or earnings claim.* A "specific job or earnings claim" is any express claim or representation concerning the employment opportunities available to students or the demand for students who purchase the school's course, or the amount of salary or earnings available to students who purchase the school's course.

(t) *Media advertisement.* A "media advertisement" is any advertisement disseminated to the public by means of print or broadcast media, including newspapers, magazines, radio, television, posters, or any other means. It does not include promotional materials that are mailed by a school or distributed by its sales representatives.

(u) *Equipment.* The term "equipment" includes any tools or other devices delivered to the student for use in the course but does not include records, tapes, slides, film, books, or any other written course materials.

§ 438.2 Enrollment and cooling-off period.

(a) The school must give the prospective student a completed copy of the enrollment contract at the time the prospective student signs the contract or upon the school's receipt of an enrollment contract completed entirely by mail. The enrollment contract must be written in the same language as the oral sales presentation, if any, made by the school and must contain the name and address of the school.

(b) The school must place on the enrollment contract the explanation of the prospective student's cooling-off rights contained in the notice entitled "CANCELLING THIS CONTRACT" required by § 438.5 of this rule. If the school does not place the "CANCELLING THIS CONTRACT" notice on the front page of the enrollment contract, the school must place on the front page the following notice: "An explanation of your cancellation and refund rights is on page of this contract." This notice must be printed in boldface type.

(c) After the school has accepted the enrollment contract of the prospective student, the school must mail to the prospective student the disclosure of the school's graduation rate, and placement rate if applicable, required by § 438.3 of this rule. In the same envelope used to mail that notice to the prospective student, the school must also mail to the prospective student, on a separate sheet of paper, the notice entitled "HOW TO CANCEL THIS CONTRACT" required by § 438.6 of this rule.

(d) If a prospective student cancels the enrollment contract during the period described in the notices required by §§ 438.5 and 438.6 the school must refund all payments made by the prospective student and cancel and return any evidence of indebtedness within fourteen days after receiving any notice of cancellation. If a school fails to comply with § 438.5 and § 438.6, it shall not retain any money or evidence of indebtedness from a prospective student for that course.

(e) If a residence school provides a prospective student with equipment during the cooling-off period, it must disclose the amount being charged for that equipment in the notice of cool-

ing-off rights required by § 438.5 and § 438.6 of the rule. If the prospective student cancels his or her enrollment contract during the cooling-off period, and returns the equipment to the school within twenty (20) days from the date of cancellation, no charge may be made by the school for the equipment. If, however, the student fails to return the equipment within the twenty (20) day period, the school may retain the amount disclosed.

Any equipment provided to a student by a correspondence school during the cooling-off period, may be retained by the student without charge if the student cancels during the cooling-off period.

§ 438.3 Disclosure of graduation and placement rates.

(a) On the Disclosure Form entitled "How Our Students Are Doing", described by paragraph (e) of this section, a school shall disclose its graduation rate for the course that is the subject of the enrollment contract in the following manner:

(1) For residence courses with fixed class schedules, the school shall disclose these figures for its most recent graduating class:

- (i) The number of students;
- (ii) The number and percentage of students who graduated;
- (iii) The number and percentage of students who failed to complete;

Provided that, if a course has more than one graduating class during its most recent base period (as defined in § 438.1(j)), the school may disclose its graduation rate in accordance with paragraph (a)(2) of this section.

(2) For residence courses without fixed class schedules, the school shall disclose these figures for individuals who became students during the school's most recent two base periods or most recent base period if individuals only became students during that period:

- (i) The number of students;
- (ii) The number and percentage of those students who graduated;
- (iii) The number and percentage of those students who failed to complete during that time;

(iv) The number and percentage of those students who remained actively enrolled at the end of that time.

(3) For correspondence or combination courses, the school shall disclose these figures for individuals who became students during the school's most recent four base periods, or most recent two or three base periods if individuals only became students during those periods:

(i) The number of students;

(ii) The number and percentage of those students who graduated;

(iii) The number and percentage of those students who failed to complete during that time;

(iv) The number and percentage of those students who remained actively enrolled at the end of that time.

(4) For new courses (as defined in § 438.1(c)), the school shall make the following disclosure:

Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or State employment office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on starting salaries and requirements for prior work experience.

Provided, however, That a new course with respect to which no general job or earnings claim is made may make the following disclosure:

Since this course is new, we are not able to give you information on the graduation rate of our students.

(5) A school may, at its option, include the following statement on the Disclosure Form in the manner shown on Appendices A-C.

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons.

(6) For purposes of this section the term student does not include a person who has not attended at least one residence school class or submitted at least one correspondence lesson.

(b) If a school makes a job or earnings claim for a course other than a new course, the school shall disclose the following placement information on the Disclosure Form entitled "How Our Students Are Doing," described by paragraph (c) of this section for each course that is the subject of the enrollment contract:

(1) For residence courses with fixed class schedules, the school shall disclose these figures for its most recent graduating class:

(i) The number and percentage of graduates who obtained employment in jobs for which the course prepared them within four months of leaving the course;

(ii) The number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);

(iii) The number and percentage of these graduates who refused to provide salary information

Provided that, If a course has more than one graduating class during its most recent base period (as defined in § 438.1(c)), the school may disclose its placement rate in accordance with paragraph (b)(2) of this section.

(2) For residence courses without fixed class schedules, the school shall disclose these figures for individuals who became students during the school's most recent two base periods, or most recent base period if individuals only became students during that period:

(i) The number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;

(ii) The number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);

(iii) The number and percentage of these graduates who refused to provide salary information.

(3) For correspondence or combination courses, the school shall disclose these figures for individuals who became students during the school's most recent four base periods or most recent two or three base periods if in-

dividuals only became students during those periods:

(i) The number and percentage of graduates who, within four months of leaving the course, obtained employment in jobs for which the course prepared them;

(ii) The number and percentage of these graduates by their yearly gross salary, in increments of two thousand dollars (\$2,000);

(iii) The number and percentage of these graduates who refused to provide salary information.

(4) A school may, at its option, include the following statement on the Disclosure Form in the manner shown in Appendices A-C:

In evaluating our record, remember not all of our students took this course to get a job in the field of (school to insert area of training). Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

(c) The disclosure specified by paragraph (b) of this section must be based on the school's actual knowledge of its students' experiences. Actual knowledge shall be verified, at a minimum, by a list that includes the following information for each student who is counted as obtaining employment in a job for which the course prepared him or her:

(1) The student's name and address (or telephone number);

(2) The employer's name;

(3) The name or title of the job obtained;

(4) Information that indicates that the job was obtained within four (4) months of leaving the course; and

(5) The student's annual gross salary expressed in increments of two thousand dollars (\$2,000), or an indication of the student's refusal to provide such salary information.

(d) No school shall make any specific job or earnings claim for a new course.

(e) The information required or permitted to be disclosed under paragraphs (a) and (b) of this section shall be contained in a Disclosure Form entitled "How Our Students Are Doing." The Disclosure Form shall contain no other information or representations. The name of the school and the course shall appear at the top of form,

immediately below the title of the form. The format of this notice must conform to the examples set forth in Appendices A-C, including the same capitalization and underlining of words. This form must be mailed to all prospective students who have signed enrollment contracts. It must be mailed in the same envelope as the notice explaining the prospective student's cancellation, cooling-off and refund rights required by § 438.6 of this rule. No other materials may be included in that envelope.

(f) If a school makes a general job or earnings claim or a specific job or earnings claim that is not substantiated by the Disclosure Form required by paragraph (e) of this section, the school must possess a reasonable basis for each such claim at all times that the claim is made and the school must not know or have reason to know of facts which would make the claim inapplicable to the school, its enrollees or a particular geographical area served by the school. A "reasonable basis" shall consist of a statistically valid and reliable survey which substantiates the claim.

(1) Nothing in paragraph (f) of this section shall be construed as prohibiting schools from making jobs or earnings claims which are substantiated by projections from the "Occupational Outlook Handbook" published by the Bureau of Labor Statistics or by similar projections published by other federal or State agencies. However, when such claims are contained in non-media advertising, the schools must clearly and conspicuously disclose in immediate conjunction with the claim, any limitations, restrictions or caveats accompanying or made applicable to those projections in their original source.

(2) A school shall maintain records adequate to disclose the facts upon which each claim covered by this paragraph is based. Such records shall be maintained for three years from the date the claim is made, and, after compliance with any applicable federal law concerning the privacy or confidentiality of student records, shall be made available for inspection and copying by Federal Trade Commission

officials upon reasonable notice and during regular business hours.

[43 FR 60796, Dec. 28, 1978, as amended at 44 FR 32208, June 5, 1979]

§ 438.4 Cancellation and refund procedures after cooling-off period.

(a) After the cooling-off period provided for in § 438.2 has ended, a student may cancel his or her enrollment in the course by written notification to the school. Cancellation by the student is effective on the date the student mails or delivers written notification to the school or on the date that the student gives the school constructive notice (as defined in § 438.1(n)) of his or her intention to withdraw from the course.

(b) If a student gives the school written notice of his or her intention to remain enrolled in a course, the time period for measuring constructive notice will begin anew from the date of the written notice. Any previous cancellation by virtue of the student's constructive notice will not be effective if the student provides this written notice of his or her intention to remain enrolled.

(c) If a student cancels his or her enrollment contract after the cooling-off period, the school shall not receive, demand, or retain more than a pro rata portion of the total contract price plus a registration fee in the amount of \$25 or 10% of the total contract price (not to exceed \$75) whichever is greater. This total obligation shall not be more than the total contract price. The pro rata portion shall be calculated in the following manner:

(i) Courses for which the school does not make any separate equipment charge:

(i) The school must calculate the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the student at a residence course without a fixed class schedule, or the lessons sent in by the student for a correspondence course before the student's cancellation:

(ii) This number must be divided by the total number of classes, hours or lessons required to complete the course; and

(iii) The resulting number shall be multiplied by the total contract price.

(2) Courses for which the school does make a separate equipment charge:

(i) The school must calculate the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the student at a residence course without a fixed class schedule, or the lessons sent in by the student for a correspondence course before the student's cancellation:

(ii) This number must be divided by the total number of classes, hours or lessons required to complete the course; and

(iii) If a student returns to the school within 21 days of withdrawing from a course all of the equipment provided by the school, the school must add the cost of this equipment (as disclosed in § 438.1(d)) to the total contract price. This figure should then be multiplied by the figure calculated in paragraph (c)(2)(ii) of this section.

If the student does not return the equipment within 21 days to the school, the school may retain the full amount of the equipment charge plus the pro rata portion of the total contract price.

(3) For combination courses, the school must designate separate prices for the residence and correspondence portions of the course in the enrollment contract, and the pro rata portion of the total contract price shall be the sum of the separate pro rata obligations for the residence portion and the correspondence portion.

(d) If a school had not made a separate charge for equipment, the school must within twenty-one (21) days of the date of cancellation provide the student with the correct refund payment, if any, or must cancel that portion of the student's indebtedness that exceeds the amount due to the school. *However*, if a school had made a separate charge for equipment provided to the student and the student has cancelled by constructive notice (see § 438.1(n) for a definition of this term) the school must send the following notice to the student:

Dear -----: Our records show that you have not [submitted lessons] [attended classes] for [school insert (120) for correspondence courses, (5) for residence courses with fixed class schedules or (60) for residence courses without fixed schedules] consecutive days, so we have canceled your contract. If you want to stay in this course fill in the information at the bottom of this letter and return it to us.

If you decide to cancel this contract with us, you can keep the equipment we sent you or return it to us. If you keep this equipment, you will owe us the total cost. This comes to ----- Here is how we figured this amount:

Description of Equipment	Delivery Date	Cost
Ohmmeter	[Date or installment number]	\$32.10

If you decide to return this equipment, you will receive a partial refund of the cost based on the percentage of the course you completed before you dropped out. But to get this refund, you must return this equipment to us within twenty-one (21) days from the date of this letter. Send this equipment to the following address:

Before making a decision on whether or not to return this equipment, you should review the section of your contract that explains how we settle your account.

School -----
Address -----

Dear Sirs: I want to continue taking this course. Please do not cancel my contract.
Date -----

Student's Signature -----

In the event that a school has made a separate charge for equipment, the school must provide the student with the correct refund payment, or cancel the excess indebtedness, within 42 days from the date it mails the above notice to the student.

§ 438.5 Contract notice.

(a) The school must include in the enrollment contract the following notice. The same method of capitalization and underlining of words used in the notices set forth below must be used by the school. All subtitles in the notices must be in boldface type. The title of the notice "CANCELLING THIS CONTRACT" must be in all capitals with boldface type.

(1) For correspondence courses without a separate equipment charge, the notice set forth in Appendix D;

(2) For correspondence courses with a separate equipment charge, the notice set forth in Appendix E;

(3) For residence courses without fixed class schedules without a separate equipment charge, the notice set forth in Appendix F;

(4) For residence courses without fixed class schedules with a separate equipment charge, the notice set forth in Appendix G;

(5) For residence courses with fixed class schedules without a separate equipment charge, the notice set forth in Appendix H;

(6) For residence courses with fixed class schedules with a separate equipment charge, the notice set forth in Appendix I;

(7) For combination courses without a separate equipment charge, the notice set forth in Appendix J; and

(8) For combination courses with a separate equipment charge, the notice set forth in Appendix K.

(b) If a residence school has classes of varying length and calculates its students' financial obligations on an hourly basis the school must substitute the word "hour" for the word "class" in the notices required by paragraphs (a) (3) through (8) of this section.

§ 438.6 Notice to be mailed.

The school must mail to the prospective student the following notice after the school has accepted the enrollment contract of the prospective student. The same method of capitalization and underlining of words used in notices set forth below must be used by the school. All subtitles in the notice must be in boldface type. The title of the notice "HOW TO CANCEL YOUR CONTRACT" shall be in all capitals with boldface type.

(a) For correspondence courses without a separate equipment charge, the notice set forth in Appendix L;

(b) For correspondence courses with a separate equipment charge, the notice set forth in Appendix M;

(c) For residence courses without fixed class schedules without a separate equipment charge, the notice set forth in Appendix N;

(d) For residence courses without fixed class schedules with a separate equipment charge, the notice set forth in Appendix O;

(e) For residence courses with fixed class schedules without a separate equipment charge, the notice set forth in Appendix P;

(f) For residence courses with fixed class schedules with a separate equipment charge, the notice set forth in Appendix Q;

(g) For combination courses without a separate equipment charge, the notice set forth in Appendix R;

(h) For combination courses with a separate equipment charge, the notice set forth in Appendix S.

§ 438.7 Advertising disclaimers.

(a) If a school makes any job or earnings claims for any course in a media advertisement, the school must include the following disclaimer in this advertisement:

Graduation from this course does not insure that you will get a job. To find out how our graduates have done, send for our job placement record

(b) If a school makes any written job or earnings claims about any course, other than a media advertisement, the school must include in that document full disclosures of the school's graduation and placement rates require by § 438.3 (a) and (b).

(c) If a school makes any general job or earnings claims for a new course, that school must make the following disclosure in lieu of those required in paragraphs (a) and (b) of this section:

(1) In media advertisements:

Since this course is new, we are not able to tell you about the experience of our students in getting jobs.

(2) All other, non-media, advertisements:

Since this course is new, we are not able to give you information on the graduation or placement rates of our students, or the amount of money you might earn after completing this course. As an alternative, we suggest you talk to a job counselor or State employment office about your chances of finding a job in the field we train you for. They will have current information on job opportunities in the area where you live. In addition, they can offer you information on

starting salaries and requirements for prior work experience.

§ 438.8 Miscellaneous requirements.

(a) The school may not include in the enrollment contract or any other document a waiver of any of the rights or obligations created by this rule. No oral waiver of any of these rights or obligations shall be effective.

(b) The notices and disclosures required by § 438.5 and § 438.6 must be written in a least 10-point type, and except as indicated in the Appendices required by those sections, must not be in all capital letters. The notices must be written in the same language as the oral sales presentation, if any, made by the school.

§ 438.9 Preemptive effect of the rule.

This trade regulation rule preempts any provision of any State law, rule, or regulation which is inconsistent with or otherwise frustrates the purpose of the provisions of this trade regulation rule, except where the Commission has exempted such a State or local law, rule or regulation. If, upon, application of any appropriate State or local governmental agency, the Commission determines that the State statutory or regulatory provision affords greater protection to students than the comparable provision of the Commission's rule then the State requirement will be applicable to the extent specified in the Commission's determination on the exemption application. Any exemption application filed under this section should address the following factors:

(a) The substantive protection offered by the comparable State provision;

(b) The readability of the consumer notices used to explain to the student or prospective student his or her rights under the provision (where applicable);

(c) The availability of self-help remedies to the student or prospective student to enforce his or her rights (e.g., the existence of contractual rights through mandated contractual language); and

(d) The forms of relief and redress available to enforce the State provision.

Any Commission decision to grant an exemption request from a State or local governmental entity shall be conducted under section 553 of Title 5, United States Code.

§ 438.10 Effective date of the rule.

The effective date of the Rule will be January 1, 1980. Disclosures required by § 438.3 shall be made on the basis of base periods beginning January 1, 1979. Until such time has elapsed as to permit schools to make disclosures on the basis of the minimum number of base periods required for them under § 438.3, such disclosures shall be made on the basis of the number of base periods actually completed (plus six months) during the period beginning January 1, 1979.

APPENDIX A

CORRESPONDENCE COURSE

How Our Students Are Doing

[School Name] _____
Course _____

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—From _____ To _____

Number of students enrolled	100	100%
50 students graduated	50	50%
30 students did not finish the course	30	30%
20 students are still enrolled	20	20%

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 50 students graduated from this course from _____ to _____. We found that 38 or 76% of these 50 graduates got jobs in the field of _____ within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

Starting salary	Number of students	Percent of total
\$6,000-\$7,999	9	24
\$8,000-\$9,999	11	29
\$10,000-\$11,999	7	18
\$12,000-\$13,999	9	24
Refused to tell	2	5
	38	100

In evaluating our record, remember not all of our students took this course to get a job in the field of _____. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

APPENDIX B

RESIDENCE COURSE WITHOUT FIXED-CLASS SCHEDULES

How Our Students Are Doing

[School Name] _____
Course _____

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—From _____ To _____

Number of students enrolled	100	100%
50 students graduated	50	50%
30 students did not finish the course	30	30%
20 students are still enrolled	20	20%

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 50 students graduated from this course from _____ to _____. We found that 38 or 76% of these 50 graduates got jobs in the field of _____ within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

Starting salary	Number of students	Per- cent of total
\$6,000--\$7,999	9	24
\$8,000--\$9,999	11	29
\$10,000--\$11,999	7	18
\$12,000--\$13,999	9	24
Refused to tell	2	5
	38	100

In evaluating our record, remember not all of our students took this course to get a job in the field ———. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

APPENDIX C

RESIDENCE COURSES WITH FIXED-CLASS SCHEDULES

How Our Students Are Doing

[School Name] _____
Course _____

This form has been prepared to give students and their families important background information to use in evaluating the performance of our school.

Graduation Record—For the Class Graduating on _____

Number of students enrolled	100	100%
60 students graduated	60	60%
40 students did not finish the course	40	40%

In evaluating these figures, you should know that students may drop out of a course for a variety of reasons. These range from dissatisfaction with the course to inability to do the work. Other students drop out of school for personal reasons, such as poor health.

Placement and Earnings Record

Since we made job placement or earnings claims in promoting this course, we have prepared our record in these areas for your review. As the Graduation Record pointed out, 60 students graduated from this course from _____ to _____. We found that 38 or 63% of these 60 graduates got jobs in the field of _____ within 4 months of their graduation. A breakdown of the starting salaries for these graduates is summarized below:

Starting salary	Number of students	Per- cent of total
\$6,000--\$7,999	9	24
\$8,000--\$9,999	11	29
\$10,000--\$11,999	7	18
\$12,000--\$13,999	9	24
Refused to tell	2	5
	38	100

In evaluating our record, remember not all of our students took this course to get a job in the field of _____. Also, we were unable to reach some of our graduates to see if they got jobs. So, our placement percentage might be understated.

APPENDIX D

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson by the number of lessons you sent in and add a \$— registration fee. We compare this to what you have paid to see if you are entitled to a refund or owe us additional money. The price for each lesson is figured by dividing the \$— course cost by the — lessons in the course. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

APPENDIX E**CANCELLING THIS CONTRACT**

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Con-*

tract form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will send you and the installment charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/13/78 (or lesson	\$32.00
Circuit board	2/31/78 number)	\$20.00

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two weeks of the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of lessons you sent in. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — lessons in the course to get a cost per lesson.

We multiply this cost per lesson by the number of lessons you sent in and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

[43 FR 60796, Dec. 28, 1978; 44 FR 32209, June 5, 1979]

APPENDIX F

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes you attend and add a \$— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

APPENDIX G

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"]

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign

your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or class	\$32.00
Circuit board	2/31/78 number)	\$20.00

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes you attend. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes you attended and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes you attended. Finally, we add the cost of the unreturned equipment and \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

[43 FR 60796, Dec. 28, 1978; 44 FR 32209, June 5, 1979]

APPENDIX H

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes held before you cancel and add a \$— registration fee. We compare this to what you paid to see whether you are entitled to a refund or owe us additional money.

tional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund we will send it to you within twenty-one (21) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

APPENDIX I

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course [for schools making job or earnings claims insert "and the placement rate of our graduates"].

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (for class	\$32.00
Circuit board	2/31/68 (number)	\$20.00

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes held before you cancel. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes held before you cancel and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

[43 FR 60796, Dec. 28, 1973; 44 FR 32209, June 5, 1979]

APPENDIX J

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course (for schools making job or earnings claims insert "and the placement rate of our graduates").

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Settling Your Account

If you cancel this contract before the fourteen (14) day period is over, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period you may owe us some money. To determine the exact amount, we multiply the price for each lesson in the home study portion of this course by the number of lessons you sent in. The price for each lesson is figured by dividing the \$— cost of the home study portion of this course by the — lessons in the part of the course. We add to this the amount you owe us for the residence portion of this course. To determine this we multiply the price for each class by the number of classes you attend up to the time you cancel. The price

for each class is figured by dividing the \$— cost for the residence portion of this course by the — classes in the course. We add to this total a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

APPENDIX K

CANCELLING THIS CONTRACT

This notice explains your rights and responsibilities concerning cancellation of this contract.

Automatic Cancellation

This contract is automatically cancelled and you do not owe us any money if the following two (2) forms are not mailed to you.

How Our Students Are Doing

Tells you how many students complete the course (for schools making job or earnings claims insert "and the placement rate of our graduates").

How To Cancel Your Contract

Provides information on how to cancel this contract. Also, this form describes how we figure what is owed for students who have already begun the course.

Your Right To Cancel

If you decide not to take this course, you have fourteen (14) days to cancel this contract and get a full refund. The fourteen days start on the day we mail these forms. The *How To Cancel Your Contract* form shows you when the fourteen days are up. To cancel, you must sign the bottom of this contract or the *How To Cancel Your Contract* form we are sending you, put on the date and mail this contract or the form to us no later than midnight of the fourteenth day.

You can also cancel this contract by sending us a letter no later than midnight of the fourteenth day. Be sure to date and sign

your letter. If possible, keep a copy. Your contract will be cancelled the day you mail this letter.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or lesson or	\$32.00
Circuit board	2/31/78 class number)	\$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— cost of the home study portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — lessons in the home study portion of the course to get a cost per lesson. We multiply this cost per lesson by the number of lessons you sent in.

We add to this the amount you owe us for the residence portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — classes in the course. We multiply this cost per class by the number of classes held before you cancelled. We add a \$— registration fee to what you owe us for the home study and residence portions of this course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment to us within twenty-one (21) days from the date this contract is cancelled, we divide the \$— cost for the home study portion of this course by the — lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. We add to this the amount you owe us for the residence portion of this course.

We divide the \$— cost for the residence portion of this course by the — classes in

the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. We add the cost of the equipment delivered to you and a \$— registration fee to what you owe us for the home study and residence portion of the course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

[43 FR 60796 Dec. 28, 1978; 44 FR 32209, June 5, 1979]

APPENDIX L

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on ——. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each lesson by the number of lessons you sent in and a \$— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each lesson is figured by dividing the \$— course cost by the — lessons in the course. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

APPENDIX M

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____.

Equipment

A description of the equipment we will send you and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or lessson.....)	\$32.00
Circuit board	2/31/78 number).....	\$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of lessons you sent in. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — lesson, in the course to get a cost per lesson.

We multiply this cost per lesson by the number of lessons you sent in and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — lessons in the course. This gives us a price per lesson of \$— . We multiply this price per lesson by the number of lessons you sent in. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to use that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

[43 FR 60796, Dec. 28, 1978; 44 FR 32209, June 5, 1979]

APPENDIX N

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes you attend and add a \$— registration fee. We compare this to what you paid to see if you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

APPENDIX O

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or class	\$32.00
Circuit board	2/31/78 number)	\$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you with for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes you attend. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes you attended and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes you attended. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not attend classes for 60 straight days at any point during the course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

[43 FR 60796, Dec. 28, 1978; 44 FR 32209, June 5, 1979]

APPENDIX P

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we multiply the price for each class by the number of classes held before you cancel and add a \$— registration fee. We compare this to what you paid to see whether you are entitled to a refund or owe us additional money. The price for each class is figured by dividing the \$— course cost by the — classes in the course. If you are entitled to a refund we will send it to you within twenty-one (21) straight days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

APPENDIX Q

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____.

Equipment

A description of the equipment we will provide you with and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or class	\$32.00
Circuit board	2/31/78 number)	\$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancel-

lation. Any equipment we provided you for this course must be returned to us within twenty (20) days from the day you cancel this contract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a proportion of its cost. Your payment is based on the number of classes held before you cancel. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— course cost and the cost of the equipment delivered. We divide this total by the — classes in the course to get a cost per class. We multiply this cost per class by the number of classes held before you cancel and add a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment within twenty-one (21) days from the date this contract is cancelled, we divide the \$— course cost by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. Finally, we add the cost of the unreturned equipment and a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not attend classes for five (5) straight days on which classes meet, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

[43 FR 60796, Dec. 28, 1978; 44 FR 32209, June 5, 1979]

APPENDIX R

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____. If you cancel this contract within this fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. To determine the exact amount, we

multiply the price for each lesson in the home study portion of this course by the number of lessons you sent in. The price for each lesson is figured by dividing the \$— cost for home study portion of this course by the — lessons in that part of the course. We add to this the amount you owe us for the residence portion of this course. To determine this we multiply the price for each class by the number of classes you attend up to the time you cancel. The price for each class is figured by dividing the \$— cost for the residence portion of this course by the — classes in the course. We add to this total a \$— registration fee. The total is compared to what you paid to see if you are entitled to a refund, or owe us additional money. If you are entitled to a refund, we will send it to you within twenty-one (21) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____
Student's Signature _____

APPENDIX S

HOW TO CANCEL YOUR CONTRACT

You have fourteen (14) days from the day we mailed you this notice to cancel your contract and get a full refund. To cancel, sign this form, date it, and mail it to us before midnight on _____.

Equipment

A description of the equipment we will send you and the charges are summarized below:

Item	Delivery date	Cost
Ohmmeter	1/31/78 (or lesson or	\$32.00
Circuit board	2/31/78 class number)	\$20.00

Settling Your Account

If you cancel this contract within the fourteen (14) day period, we will refund any money you have paid us within two (2) weeks from the day we receive your cancellation. Any equipment we provided you for this course must be returned to us within (20) days from the day you cancel this con-

tract or you will owe us the amount shown above.

If you cancel this contract after the fourteen (14) day period, you may owe us some money. Keep in mind that if you return the equipment we delivered, you pay for a portion of its cost. When you keep the equipment, you pay for its full cost.

If you return the equipment we delivered, we add the \$— cost of the home study portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — lessons in the home study portion of the course to get a cost per lesson. We multiply this cost per lesson by the number of lessons you sent in.

We add to this the amount you owe us for the residence portion of this course and the cost of the equipment delivered to you during this portion of the course. We divide this total by the — classes in the course. We multiply this cost per class by the number of classes held before you cancelled. We add a \$— registration fee to what you owe us for the home study and residence portions of this course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money.

If you fail to return this equipment to us within twenty-one (21) days from the date this contract is cancelled, we divide \$— cost for the home study portion of this course by the — lessons in the course. This gives us a price per lesson of \$—. We multiply this price per lesson by the number of lessons you sent in. We add to this the amount you owe us for the residence portion of this course.

We divide the \$— cost for the residence portion of this course by the — classes in the course. This gives us a price per class of \$—. We multiply this price per class by the number of classes held before you cancel. We add the cost of the equipment delivered to you and a \$— registration fee to what you owe us for the home study and residence portion of the course. The total is compared to what you paid to see if you are entitled to a refund or owe us additional money. If you are entitled to a refund, we will send it to you within forty-two (42) days from the day you cancel.

If you do not send in any lessons for 120 straight days at any point during the home study portion of this course or do not attend classes for 5 straight days on which classes are held during the residence portion of this combination course, we will cancel your contract. But you will be given an opportunity to apply for reinstatement by writing to us that you wish to continue.

I have changed my mind and want to cancel this contract.

Date _____

Student's Signature _____

[43 FR 60796, Dec. 28, 1978; 44 FR 32209, June 5, 1979]

PART 444—CREDIT PRACTICES

Sec.

444.1 Definitions.

444.2 Unfair credit practices.

444.3 Unfair or deceptive cosigner practices.

444.4 Late charges.

444.5 State exemptions.

AUTHORITY: Sec. 18(a), 88 Stat. 2193, as amended 93 Stat. 95 (15 U.S.C. 57a); 80 Stat. 383, as amended, 61 Stat. 54 (5 U.S.C. 552).

SOURCE: 49 FR 7789, Mar. 1, 1984, unless otherwise noted.

§ 444.1 Definitions.

(a) *Lender*. A person who engages in the business of lending money to consumers within the jurisdiction of the Federal Trade Commission.

(b) *Retail installment seller*. A person who sells goods or services to consumers on a deferred payment basis or pursuant to a lease-purchase arrangement within the jurisdiction of the Federal Trade Commission.

(c) *Person*. An individual, corporation, or other business organization.

(d) *Consumer*. A natural person who seeks or acquires goods, services, or money for personal, family, or household use.

(e) *Obligation*. An agreement between a consumer and a lender or retail installment seller.

(f) *Creditor*. A lender or a retail installment seller.

(g) *Debt*. Money that is due or alleged to be due from one to another.

(h) *Earnings*. Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(i) *Household goods*. Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included

within the scope of the term "household goods":

- (1) Works of art;
 - (2) Electronic entertainment equipment (except one television and one radio);
 - (3) Items acquired as antiques; and
 - (4) Jewelry (except wedding rings).
- (j) *Antique*. Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(k) *Cosigner*. A natural person who renders himself or herself liable for the obligation of another person without compensation. The term shall include any person whose signature is requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that is in default. The term shall not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to State law. A person who does not receive goods, services, or money in return for a credit obligation does not receive compensation within the meaning of this definition. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

§ 444.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of Section 5 of that Act for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely

to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a non-possessory security interest in household goods other than a purchase money security interest.

§ 444.3 Unfair or deceptive cosigner practices.

(a) In connection with the extension of credit to consumers in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is:

(1) A deceptive act or practice within the meaning of section 5 of that Act for a lender or retail installment seller, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice within the meaning of section 5 of that Act for a lender or retail installment seller, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) Any lender or retail installment seller who complies with the preventive requirements in paragraph (c) of this section does not violate paragraph (a) of this section.

(c) To prevent these unfair or deceptive acts or practices, a disclosure, consisting of a separate document that shall contain the following statement and no other, shall be given to the co-

signer prior to becoming obligated, which in the case of open end credit shall mean prior to the time that the agreement creating the cosigner's liability for future charges is executed.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

§ 444.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, it is an unfair act or practice within the meaning of section 5 of that Act for a creditor, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, "collecting a debt" means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 444.5 State exemptions.

(a) If, upon application to the Federal Trade Commission by an appropriate State agency, the Federal Trade Commission determines that:

(1) There is a State requirement or prohibition in effect that applies to

any transaction to which a provision of this rule applies; and

(2) The State requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule;

Then that provision of the rule will not be in effect in that State to the extent specified by the Federal Trade Commission in its determination, for as long as the State administers and enforces the State requirement or prohibition effectively.

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.

453.2 Price disclosures.

453.3 Misrepresentations.

453.4 Required purchase of funeral goods or funeral services.

453.5 Services provided without prior approval.

453.6 Retention of documents.

453.7 Comprehension of disclosures.

453.8 Declaration of intent.

453.9 State exemptions.

453.10 Mandatory review.

AUTHORITY: Sec. 1(g) 38 Stat. 721 (15 U.S.C. 46(g)); 80 Stat. 352, as amended, 81 Stat. 54 (5 U.S.C. 552).

SOURCE: 47 FR 42299, Sept. 24, 1982, unless otherwise noted.

§ 453.1 Definitions.

(a) *Accounting year.* "Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

(b) *Alternative container.* An "alternative container" is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

(c) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar

term, A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to, the following items: Cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(d) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

(e) *Commission.* "Commission" refers to the Federal Trade Commission.

(f) *Cremation.* "Cremation" is a heating process which incinerates human remains.

(g) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(h) *Direct cremation.* A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(i) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(j) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(k) *Funeral services.* "Funeral services" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(l) *Immediate burial.* An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(m) *Outer burial container.* An "outer burial container" is any container which is designed for placement

in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(n) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(o) *Services of funeral director and staff.* The "services of funeral director and staff" are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

(p) *Unfinished wood box.* An "unfinished wood box" is an unornamented casket made of wood which does not have a fixed interior lining.

[49 FR 563, Jan. 5, 1984]

§ 453.2 Price disclosures.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosures.* (i) Tell persons who call the funeral provider's place of business and ask about the terms, conditions, or prices at which funeral goods or funeral serv-

ices are offered, that price information is available over the telephone.

(ii) Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists in paragraphs (b)(2) through (4) of this section which reasonably answers the question and any other information which reasonably answers the question and which is readily available.

(2) *Casket price list.* (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. *Provided however*, That funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information which is required by this paragraph (b)(2)(i) of this section.

(ii) Place on the list, whether a printed or typewritten list or other format is used, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.*

(i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, bro-

chures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. *Provided however*, That funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information which is required by this paragraph (b)(3)(i) of this section.

(ii) Place on the list, whether a printed or typewritten list or other format is used, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i) Give a printed or typewritten price list for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider must offer them the list upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services. This list must contain at least the following information:

(A) The name, address, and telephone number of the funeral provider's place of business;

(B) A caption describing the list as a "general price list";

(C) The effective date for the price list; and

(D) In immediate conjunction with the price disclosures required by paragraph (b)(4)(ii) of this section, the statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected."

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with: (1) A separate price for a direct cremation where the purchaser provides the container; (2) separate prices for each direct cremation offered including an unfinished wood box or alternative container; and (3) a description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with: (1) A separate price for an immediate burial where the purchaser provides the casket; (2) separate prices for each immediate burial offered including a casket or alternative container; and (3) a description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities for viewing;

(I) Use of facilities for funeral ceremony;

(J) Other use of facilities, together with a list of facilities provided for any quoted price;

(K) Hearse;

(L) Limousine;

(M) Other automotive equipment, together with a description of the automotive equipment provided for any quoted price; and

(N) Acknowledgment cards.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the services of funeral director and staff, together with a list of the principal services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.); or

(2) The following statement: "Please note that a fee for the use of our services is included in the price of our caskets. Our services include (specify)." The statement must be placed on the general price list together with casket price range, required by paragraph (b)(4)(iii)(A)(1) of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)(2) of this section.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) of this section may be included on any contract, statement, or other document which the

funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (b) (2), (3), and (4) of this section so long as the statement required by paragraph (b)(5) of this section is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming Provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that State or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when State or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial."

(b) *Casket for cremation provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public,

it is a deceptive act or practice for a funeral provider to:

(i) Represent that State or local law requires a casket for direct cremations;

(ii) Represent that a casket (other than an unfinished wood box) is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that State or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that State law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(ii), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, no State or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

(d) *General provisions on legal and cemetery requirements—(1) Deceptive*

acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that Federal, State, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions—(1) Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following sentence in the general price list, at the end of the cash advances

disclosure, required by § 453.2(b)(4)(ii)(C): "We charge you for our services in buying these items," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

[49 FR 563, Jan. 5, 1984]

§ 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions—(1) Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket other than an unfinished wood box be purchased for direct cremation.

(2) *Preventive requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services—(1) Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part.

(2) *Preventive requirements.* (i) To prevent this unfair or deceptive act or practice, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4)(ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."

Provided, however, That if the charge for "services of funeral director and

staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our services" between the second and third sentences of the statement specified above herein; and

(B) Place the following disclosure on the statement of funeral goods and services selected, required by § 453.2(b)(5)(ii): "Charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) *Unfair or Deceptive Acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must in-

clude on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in § 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b) (5) for at least one year from the date on which the statement was signed.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

[49 FR 564, Jan. 5, 1984]

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate State agency, the Commission determines that:

(a) There is a State requirement in effect which applies to any transaction to which this rule applies; and

(b) That State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule;

then the commission's rule will not be in effect in that State to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the State requirement.

[49 FR 564, Jan. 5, 1984]

§ 453.10 Mandatory review.

No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

**PART 455—USED MOTOR VEHICLE
TRADE REGULATION RULE**

Sec.

- 455.1 General duties of a used vehicle dealer; definitions.
- 455.2 Consumer sales—window form.
- 455.3 Window form.
- 455.4 Contrary statements.
- 455.5 Spanish language sales.
- 455.6 State exemptions.
- 455.7 Severability.

AUTHORITY: 88 Stat. 2189, 15 U.S.C. 2309; 38 Stat. 717, as amended 15 U.S.C. 41 et seq.

SOURCE: 49 FR 45725, Nov. 19, 1984, unless otherwise noted.

EDITORIAL NOTE: At 50 FR 50163, Dec. 9, 1985, in Part 455, the effective date of the Used Car Rule as it applies within the State of Wisconsin was temporarily stayed to June 3, 1986.

§ 455.1 General duties of a used vehicle dealer; definitions.

(a) It is a deceptive act or practice for any used vehicle dealer, when that

dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To misrepresent the mechanical condition of a used vehicle;

(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and

(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

(b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act:

(1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and

(2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.

(c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule. (d) The following definitions shall apply for purposes of this part:

(1) "Vehicle" means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.

(2) "Used vehicle" means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).

(3) "Dealer" means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial in-

stitution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(4) "Consumer" means any person who is not a used vehicle dealer.

(5) "Warranty" means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.

(6) "Implied warranty" means an implied warranty arising under State law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.

(7) "Service contract" means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, provided that such contract is not regulated in your State as the business of insurance.

(8) "You" means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle a "Buyers Guide" as required by this Rule.

(1) Use a side window to display the form so both sides of the form can be read, with the title "Buyers Guide" facing to the outside. You may remove a form temporarily from the window during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated.

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (optional) _____

WARRANTIES FOR THIS VEHICLE:

☐ **AS IS - NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☐ **WARRANTY**

☐ **FULL** ☐ **LIMITED WARRANTY.** The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

SYSTEMS COVERED:

DURATION:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

☐ **SERVICE CONTRACT.** A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

28 pt Trumvrate Bold caps

2 pt Rule

10/12 Trumvrate Bold c & k
flush left ragged right
maximum line 42 picas

10 pt Baseline Rule
6 pt Trumvrate Bold caps

10 pt Baseline Rule
6 pt Trumvrate Bold caps

10 pt Trumvrate Bold caps

2 pt Rule

54 pt Box
42 pt Trumvrate Bold caps

10/10 Trumvrate Bold c & k
flush left ragged right
maximum line 42 picas

1 pt Rule

54 pt Box
42 pt Trumvrate Bold caps

10/10 Trumvrate Bold c & k
4 1/2 picas indents on 2nd
line

10 pt Trumvrate Bold caps

10 pt Baseline Rule

10/10 Trumvrate Bold c & k
maximum line 42 picas

10/10 Trumvrate Bold caps
flush left ragged right
maximum line 42 picas

10/10 Trumvrate Bold c & k
flush left ragged right
maximum line 42 picas

Federal Trade Commission

\$455.2

Below is a list of some major defects that may occur in used motor vehicles.

Frame & Body

Frame-cracks, corrective welds or rusted through
Dogtracks—bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft liners and
push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal
seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty
transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential

Improper fluid level or leakage, excluding normal
seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty
differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator,
battery or starter

Fuel System

Visible leakage

Optional Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec)
Not enough pedal reserve (DOT spec)
Does not stop vehicle in straight (DOT spec)
Hoses damaged
Drum or rotor too thin (Mfg. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seats damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage

12 pt Trumtrate Bold c;
flush left ragged right
maximum line 42 picas

2 pt Rule

8/9 Trumtrate Bold c & k;
flush left ragged right
maximum line 20 picas
1 em indent on 2nd line

2 pt Rule

10 pt Baseline Rule
6 pt Trumtrate Bold caps

DEALER

ADDRESS

SEE FOR COMPLAINTS

2 pt Rule

10/12 Trumtrate Bold c & k;
maximum line 42 picas

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

When filling out the form, follow the directions in (b) through (e) of this section and § 455.4 of this part.

(b) **Warranties**—(1) **No Implied Warranty**—“As Is”/No Warranty. (i) If you offer the vehicle without any implied warranty, i.e., “as is,” mark the box provided. If you offer the vehicle with implied warranties only, substitute the disclosure specified below, and mark the box provided. If you first offer the vehicle “as is” or with implied warranties only but then sell it with a warranty, cross out the “As Is—No Warranty” or “Implied Warranties Only” disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your State law limits or prohibits “as is” sales of vehicles, that State law overrides this part and this rule does not give you the right to sell “as is.” In such States, the heading “As Is—No Warranty” and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in States that permit “as is” sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of “As Is—No Warranty”:¹

IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, State law “implied warranties” may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) **Full/Limited Warranty**. If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is “Full” or “Limited.”² Mark the box next to the appropriate designation.

(ii) Which of the specific systems are covered (for example, “engine, transmission, differential”). You cannot use shorthand, such as “drive train” or “power train” for covered systems.

(iii) The duration (for example, “30 days or 1,000 miles, whichever occurs first”).

(iv) The percentage of the repair cost paid by you (for example, “The dealer will pay 100% of the labor and 100% of the parts.”)

(v) If the vehicle is still under the manufacturer’s original warranty, you may add the following paragraph below the “Full/Limited Warranty” disclosure: **MANUFACTURER’S WARRANTY STILL APPLIES**. The manufacturer’s original warranty has not expired on the vehicle. Consult the manufacturer’s warranty booklet for details as to warranty coverage, service location, etc.

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the “As Is—No Warranty” box or the “Implied Warranties Only” box, as appropriate.

(3) **Service contracts**. If you make a service contract (other than a contract that is regulated in your State as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the “Full/Limited Warranty” disclosure and mark the box provided.³

☐ Service Contract

A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, State law “implied warranties” may give you additional rights.

(c) **Name and Address**. Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address

¹ See § 455.5 n. 4 for the Spanish version of this disclosure.

² A “Full” warranty is defined by the Federal Minimum Standards for Warranty set forth in 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304 (1975). The Magnu-

son-Moss Warranty Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate “Full” or “Limited” for such cars, cross out both designations, leaving only “Warranty”.

³ See § 455.5 n. 4 for the Spanish version of this disclosure.

of your place of business (for example, your service station) or your own name and home address.

(d) *Make, Model, Model Year, VIN.* Put the vehicle's name (for example, "Chevrolet"), model (for example, "Vega"), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.

(e) *Complaints.* In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.

§ 455.3 Window form.

(a) *Form given to buyer.* Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.

(b) *Incorporated into contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

§ 455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the following translation and layout for Spanish language sales:⁴

⁴Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1):

Garantías implícitas solamente

Este término significa que el vendedor no hace promesas específicas de arreglar lo que requiera reparación cuando usted compra el vehículo o después del momento de la venta. Pero, las "garantías implícitas" de la ley estatal pueden darle a usted algunos derechos y hacer que el vendedor resuelva problemas graves que no fueron evidentes cuando usted compró el vehículo.

Use the following language for the "Service Contract" disclosure required by § 455.2(b)(3):

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las "garantías implícitas" de acuerdo a la ley del estado pueden concederle derechos adicionales.

GUIA DEL COMPRADOR

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promesas por escrito. Conserve este formulario.

MARCA DEL VEHICULO _____ MODELO _____ AÑO _____ NUMERO DE IDENTIFICACION _____

NUMERO DE AGENTE DEL DISTRIBUIDOR _____

GARANTIAS PARA ESTE VEHICULO: _____

☐ COMO ESTA - SIN GARANTIA

USTED PAGARA TODOS LOS GASTOS DE CUALQUIER REPARACION QUE SEA NECESARIA. El vendedor no asume ninguna responsabilidad por cualquier las reparaciones, sean cuales sean las declaraciones verbales que haya hecho acerca del vehículo.

☐ GARANTIA

☐ COMPLETA ☐ LIMITADA. El vendedor pagará _____ % de la mano de obra y _____ % de los repuestos los sistemas cubiertos que dejen de funcionar durante el periodo de garantía. Pide al vendedor una copia del documento de garantía donde se explican detalladamente la cobertura de la garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

SISTEMAS CUBIERTOS POR LA GARANTIA:

DURACION:

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pide los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las "garantías implícitas" de acuerdo a la ley del estado pueden concederle derechos adicionales.

INSPECCION PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECANICO PARA QUE INSPECCIONE EL AUTOMOVIL O LLEVAR EL AUTOMOVIL PARA QUE ESTE LO INSPECCIONE EN SU TALLER.

VEASE EL DORSE DE ESTE FORMULARIO donde se proporciona informacion adicional importante. Incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

28 pt Thumvrate Bold caps
2 pt Rule

10/12 Thumvrate Bold c & ic
Rush left ragged right
maximum line 42 picas

10 pt Baseline Rule
6 pt Thumvrate Bold caps

10 pt Baseline Rule
6 pt Thumvrate Bold caps

10 pt Thumvrate Bold caps
2 pt Rule

36 pt Bdr
32 pt Thumvrate Bold caps

10/10 Thumvrate Bold c & ic
maximum line 42 picas

1 pt Rule

36 pt Bdr
32 pt Thumvrate Bold caps

10/10 Thumvrate Bold c & ic
6 1/2 picas indent on 2nd line

10 pt Thumvrate Bold caps

10 pt Baseline Rule

10/10 Thumvrate Bold c & ic
maximum line 42 picas

10/10 Thumvrate Bold caps
maximum line 42 picas

10/10 Thumvrate Bold c & ic
Rush left ragged right
maximum line 42 picas

A continuación presentamos una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

Chasis y carrocería

Chasis grietas, soldaduras correctivas u oxidado
Chasis doblado o torcido

Motor

Fuga de aceite, excluyendo el escape normal
Bloque o tapa de recámara agrietados
Correas que tiran o no funcionan
Falto o pistoneo
Emisión excesiva de humo por el sistema de escape

Transmisión y eje de cardán

Nivel de líquido inadecuado o fuga, excluyendo filtración normal
Cubierta agrietada o rajada visible
Vibración o ruido anormal ocasionado por una transmisión o eje de cardán defectuosos
Cambio de marchas o funcionamiento inadecuado en cualquier marcha
Embrague manual patina o vibra

Diferencial

Nivel de líquido inadecuado o fuga, excluyendo filtración normal
Cubierta agrietada o rajada visible
Ruido o vibración anormal ocasionado por diferencial defectuoso

Sistema de refrigeración

Fuga, incluido el radiador
Bomba de agua defectuosa

Sistema eléctrico

Fuga en las baterías
Alternador, generador, batería o moto de arranque defectuosos

Sistema de combustible

Escape visible de combustible

Accesorios avisados

Indicadores o medidores del cuadro de instrumentos
Acondicionador de aire
Cargador y descargador

Sistema de frenos

Luz de advertencia de falta de frena
Pedal no firma bajo presión (Especif. del Dpto. de Transp.)
Juego insuficiente en el pedal (Especif. del Dpto. de Transp.)
No detiene el vehículo en línea recta (Especif. del Dpto. de Transp.)
Conductos dañados
Tambor o disco muy desgastados (Especif. del fabricante)
Grosor de las bandas de los frenos menor de 1/32 de pulgada
Sistema de servofreno dañado o con escape
Partes estructurales o mecánicas dañadas

Sistema de dirección

Juego excesivo en el volante (Especif. Dpto. de Transp.)
Juego en el volante en exceso de 1/4 pulgada
Engranaje del volante de dirección se agarota
Ruedas delanteras mal alineadas (Especif. del Dpto. de Transp.)
Correas del sistema de servodirección agrietadas o flojas
Nivel del líquido del sistema de servodirección inadecuado

Sistema de suspensión

Sellos de conexión de rodamientos defectuosos
Piezas estructurales dobladas o dañadas
Barra de estabilización desconectada
Resorte roto
Muelle del amortiguador flojo
Buen de goma dañados o ausentes
Estabilizador para curvas dañados o ausente
Amortiguador tiene fuga o funciona defectuosamente

Llantas

Profundidad de la banda de rodamiento menor de 2/32 de pulgada
Diferentes tamaños de llanta
Daños visibles

Ruedas

Grúas visibles, daños o reparaciones
Pernos de montaje sueltos o ausentes

Sistema de Escape

Fuga

12 pt. Triumvirate Bold c.
flush left, ragged right
maximum line 42 picas

2 pt. Rule

6/9 Triumvirate Bold c. & l.
flush left, ragged right
maximum line 20 picas
1 em indent on 2nd line

VERSIÓN

DESCRIPCIÓN

VERSIÓN PARA RECLAMACIONES

2 pt. Rule

10 pt. Baseline Rule

6 pt. Triumvirate Bold caps

IMPORTANTE: La información contenida en este formulario forma parte de todo contrato de compra de este vehículo. Constituye una contravención de la ley federal (16 C.F.R. 155) quitar este rotulo antes de la compra del vehículo por el consumidor (salvo para conducir el automóvil en calidad de prueba).

2 pt. Rule

10/12 Triumvirate Bold c. & l.
maximum line 42 picas

§ 455.6 State exemptions.

(a) If, upon application to the Commission by an appropriate State agency, the Commission determines, that—

(1) There is a State requirement in effect which applies to any transaction to which this rule applies; and

(2) That State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that State to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the State requirement.

(b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with Subpart C of Part 1 of the Commission's Rules of Practice.

§ 455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 456—ADVERTISING OF OPTHALMIC GOODS AND SERVICES

Sec.

456.1 Definitions.

456.2 Private conduct.

456.3 Public restraints.

456.4 Conformance to State law.

456.5 Permissible State limitations.

456.6 Private restraints.

456.7 Separation of examination and dispensing.

456.8 Federal or State employees.

456.9 Declaration of Commission intent.

AUTHORITY: 38 Stat. 717, as amended (15 U.S.C. 41, *et seq.*).

SOURCE: 43 FR 23992, June 2, 1978, unless otherwise noted.

§ 456.1 Definitions.

A "buyer" is any person who has had an eye examination.

The "dissemination of information" is the use of newspapers, telephone directories, window displays, signs, television, radio, or any other medium to communicate to the public any information, including information concerning the cost and availability of a product or service.

An "eye examination" is the process of determining the refractive condition of a person's eyes or the presence of any visual anomaly by the use of objective or subjective tests.

"Ophthalmic goods" consists of eyeglasses, or any component of eyeglasses and contact lenses.

"Ophthalmic services" are the measuring, fitting, and adjusting of ophthalmic goods to the face subsequent to an eye examination.

A "person" means any party over which the Federal Trade Commission has jurisdiction. This includes individuals, partnerships, corporations, and professional associations.

A "prescription" is the written specifications for ophthalmic lenses which are derived from an eye examination. The prescription shall contain all of the information necessary to permit the buyer to obtain the necessary ophthalmic goods from the seller of his choice. In the case of a prescription for contact lenses, the refractionist must include in the prescription only those measurements and directions which would be included in a prescription for spectacle lenses. All prescriptions shall include all the information specified by State law, if any.

A "refractionist" is any Doctor of Medicine, Osteopathy or Optometry or any other person authorized by State law to perform eye examinations.

A "seller" is any person, or his employee or agent, who sells or provides ophthalmic goods and services directly to the public.

§ 456.2 Private conduct.

(a)(1) It is an unfair act or practice for sellers to fail to disseminate information concerning ophthalmic goods and services notwithstanding State or local law to the contrary. *Provided:* Violation of this subpart by any seller acting alone shall not be deemed to be

a violation of section 5(a)(1) of the Federal Trade Commission Act.

(2) To prevent this unfair act or practice, any seller may engage in the dissemination of information concerning ophthalmic goods and services subject to the limitations expressed in § 456.5 of this part.

(b)(1) It is an unfair act or practice for refractionists to fail to disseminate information concerning eye examinations notwithstanding State or local law to the contrary. *Provided:* Violation of this subpart by any refractionist acting alone shall not be deemed to be a violation of section 5(a)(1) of the Federal Trade Commission Act.

(2) To prevent this unfair act or practice, any refractionist may engage in the dissemination of information concerning eye examinations. Nothing in this subpart shall excuse a refractionist from compliance with any State or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosures also be included.

§ 456.3 Public restraints.

It is an unfair act or practice under section 5 of the Federal Trade Commission Act for any State or local governmental entity or any subdivision thereof, State instrumentality, or State or local governmental official to enforce any:

(a) Prohibition, limitation or burden on the dissemination of information concerning ophthalmic goods and services by any seller or group of sellers, or

(b) Prohibition, limitation or burden on the dissemination of information concerning eye examinations by any refractionist. *Provided:* Nothing in this paragraph (b) shall be construed to prohibit the enforcement of a State or local law which permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, but requires that specified affirmative disclosures also be included.

Violation of paragraphs (a) and (b) of this section, shall not be deemed for

purposes of section 5(m)(1)(A) or section 19 of the Federal Trade Commission Act to be a violation of section 5(a)(1) of the Act.

§ 456.4 Conformance to State law.

It is an unfair act or practice under section 5 of the Federal Trade Commission Act:

(a) For any seller to reduce, limit, or burden the dissemination of information concerning ophthalmic goods and services in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information, or

(b) For any refractionist to reduce, limit, or burden the dissemination of information concerning eye examinations in order to comply with any law, rule, regulation or code of conduct of any nonfederal legislative, executive, regulatory or licensing entity or any other entity or person, which would have the effect of prohibiting, limiting, or burdening the dissemination of this information. *Provided:* To the extent that a State or local law, rule, or regulation permits the dissemination of information concerning eye examinations, including information on the cost and availability of those examinations, compliance with that law or regulation shall not be construed to reduce, limit or burden the dissemination of information concerning eye examinations.

§ 456.5 Permissible State limitations.

(a) To the extent that a State or local law, rule, or regulation requires that any or all of the following items be included within any dissemination of information concerning ophthalmic goods and services, such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information:

(1) Whether an advertised price includes single vision and/or multifocal lenses;

(2) Whether an advertised price for contact lenses refers to soft and/or hard contact lenses;

(3) Whether an advertised price for ophthalmic goods includes an eye examination;

(4) Whether an advertised price for ophthalmic goods includes all dispensing fees; and

(5) Whether an advertised price for eyeglasses includes both frames and lenses.

(b) Where a State or local law, rule or regulation applies to all retail advertisements of consumer goods and services (including a law, rule, or regulation which requires the affirmative disclosure of information or imposes reasonable time, place and manner restrictions), such a law, rule, or regulation shall not be considered to prohibit, limit, or burden the dissemination of information.

(c) If, upon application of an appropriate State or local governmental agency, the Commission determines that any additional requirement of any such State or local governmental agency deemed by that agency to be necessary to prevent deception or unfairness is reasonable and does not unduly burden the dissemination of information, then that requirement shall be permitted to the extent specified by the Commission.

§ 456.6 Private restraints.

(a) It is an unfair act or practice for any person, other than a State or a political subdivision or agency thereof, to prohibit, limit or burden:

(1) The dissemination of information concerning ophthalmic goods and services by any seller;

(2) The dissemination of information concerning eye examinations by any refractionist. *Provided:* Nothing in this subpart shall be construed to prohibit any person from imposing reasonable affirmative disclosure requirements on the dissemination of information concerning eye examinations.

(b) Any organization or association which is not composed primarily of sellers and/or refractionists, which adopts or enforces self-regulatory guidelines for the dissemination of information which apply to all retail advertisements of consumer goods and services, shall not be deemed to be in violation of this subpart.

(c) The conditioning of membership in a professional or trade association of sellers or refractionists on a requirement that members or prospective members of that association not engage in the dissemination of information concerning ophthalmic goods and services and eye examinations or a requirement that ophthalmic goods and services be advertised only in a prescribed manner shall be deemed to prohibit, limit or burden the dissemination of that information.

§ 456.7 Separation of examination and dispensing.

In connection with the performance of eye examinations, it is an unfair act or practice for a refractionist to:

(a) Fail to give to the buyer a copy of the buyer's prescription immediately after the eye examination is completed. *Provided:* A refractionist may refuse to give the buyer a copy of the buyer's prescription until the buyer has paid for the eye examination but only if that refractionist would have required immediate payment from that buyer had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that that person agree to purchase any ophthalmic goods from the refractionist;

(c) Charge the buyer any fee in addition to the refractionist's examination fee as a condition to releasing the prescription to the buyer. *Provided:* A refractionist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the buyer to sign, or deliver to the buyer a form or notice waiving or disclaiming the liability or responsibility of the refractionist for the accuracy of the eye examination or the accuracy of the ophthalmic goods or services dispensed by another seller.

§ 456.8 Federal or State employees.

Nothing in this part shall be construed to prohibit any Federal, State or local governmental entity from

adopting and enforcing standards or requirements concerning the dissemination of information and release of prescriptions by sellers or refractionists employed by those governmental entities.

§ 456.9 Declaration of Commission intent.

(a) (1) It is the purpose of this part to allow retail sellers of ophthalmic goods and services to disseminate information concerning those goods and services in a fair and nondeceptive manner to prospective purchasers. This part is intended to eliminate certain restraints, burdens, and controls imposed by State and local governmental action as well as by private action on the dissemination of information, including advertising, concerning ophthalmic goods and services.

(2) It is the intent of the Commission that this part shall preempt all State and local laws, rules, or regulations that are repugnant to this part, and that would in any way prevent or burden the dissemination of information by retail sellers of ophthalmic goods and services to prospective purchasers, except to the extent specifically permitted by this part. All State or local laws, rules, or regulations which burden the dissemination of information by requiring affirmative disclosures specifically addressed to ophthalmic goods and services are preempted, except for those specifically permitted by this part. State and local laws, rules, or regulations which apply to advertising of all consumer goods and services, including those that require affirmative disclosure of information, are not preempted.

(b) It is the Commission's intent that State laws which do not permit refractionists to disseminate information concerning eye examinations, including information concerning the cost and availability of those examinations, be preempted. State and local laws, rules or regulations which require affirmative disclosure of information in all disseminations of information concerning eye examinations are not preempted.

(c) The Commission intends this part to be as self-enforcing as possible. To that end, it is the Commission's intent that this part may be used,

among other ways, as a defense to any proceeding of any kind which may be brought against any retail seller of ophthalmic goods and services or refractionist who advertises in a nondeceptive and fair manner.

(d) It is not the Commission's intent to compel any seller or refractionist to disseminate information by virtue of this part. On the contrary, the provisions of this part are intended solely for the protection of those sellers and refractionists who want to disseminate information but have been restrained or prevented from advertising due to the prohibitions and restrictions of State and local laws and regulations, or by private action.

(e) In prohibiting the use of waivers and disclaimers of liability in § 456.7(d), it is not the Commission's intent to impose liability on a refractionist for the ophthalmic goods and services dispensed by another seller pursuant to that refractionist's prescription.

(f) In this part, the Rule, each subparagraph, and the Declaration of Commission Intent and their application are separate and severable.

[43 FR 23992, June 2, 1978; 43 FR 25995, June 16, 1978]

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

Sec.

- 460.1 What this regulation does.
- 460.2 What is home insulation.
- 460.3 Who is covered.
- 460.4 When the rules apply.
- 460.5 R-value tests.
- 460.6 "Representative thickness" testing.
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- 460.19 Savings claims.

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- 460.20 R-value per inch claims.
- 460.21 Government claims.
- 460.22 Tax claims.
- 460.23 Other laws, rules, and orders.
- 460.24 Stayed or invalid parts.

APPENDIX A—ENFORCEMENT POLICY STATEMENT FOR FOREIGN LANGUAGE ADVERTISING

APPENDIX B—ENFORCEMENT POLICY STATEMENT FOR CLEAR AND CONSPICUOUS DISCLOSURES IN TELEVISION ADVERTISING

AUTHORITY: 38 Stat. 717, as amended, 15 U.S.C. 41 et seq.

SOURCE: 44 FR 50242, Aug. 27, 1979, unless otherwise noted.

§ 460.1 What this regulation does.

This regulation deals with home insulation labels, fact sheets, ads, and other promotional materials in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. If you are covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition under section 5 of that Act. You can be fined heavily (up to \$10,000) each time you break a rule.

§ 460.2 What is home insulation.

Insulation is any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective (aluminum foil). It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap.

§ 460.3 Who is covered.

You are covered by this regulation if you are a member of the home insulation industry. This includes individuals, firms, partnerships, and corporations. It includes manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations. Advertisers and advertising agencies are also covered. So are labs doing tests for industry members. If you sell new homes to consumers, you are covered.

§ 460.4 When the rules apply.

You must follow these rules each time you import, manufacture, distribute, sell, install, promote, or label home insulation. You must follow them each time you prepare, approve, place, or pay for home insulation labels, fact sheets, ads, or other promotional materials for consumer use. You must also follow them each time you supply anyone covered by this regulation with written information that is to be used in labels, fact sheets, ads, or other promotional materials for consumer use. Testing labs must follow the rules unless the industry members tells them, in writing, that labels, fact sheets, ads, or other promotional materials for home insulation will not be based on the test results.

§ 460.5 R-value tests.

R-values measure resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM).

The test methods are:

(a) All types of insulation except aluminum foil must be tested with ASTM C177, C518, or C236. If the "calibrated hot box" becomes an ASTM standard test method, it can also be used. The tests must be done on the insulation material alone (excluding any air spaces). The tests must be done at a mean temperature of 75° Fahrenheit.

(1) For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product's R-value. To age the sample, follow the procedure in paragraph 4.6.4 GSA Specification HH-I-530A, or another reliable procedure.

(2) For cellulose, the tests must be done at the settled density determined under GSA Specification HH-I-515D.

(3) For loose-fill mineral wool, the tests must be done on samples that fully reflect the effect of settling on the product's R-value. When a settled density procedure becomes part of a final GSA Specification for loose-fill

mineral wool, the tests must be done at the settled density determined under the GSA Specification.

(b) Aluminum foil systems with more than one sheet must be tested with ASTM C236 (or the calibrated hot box). The tests must be done at a mean temperature of 75° Fahrenheit, with a temperature differential of 30° Fahrenheit.

(c) Single sheet systems of aluminum foil must be tested with ASTM E408 or another test method that provides comparable results. This tests the emissivity of the foil—its power to radiate heat. To get the R-value for a specific emissivity level, air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Handbook. You must use the R-value shown for 50° Fahrenheit, with a temperature differential of 30° Fahrenheit.

(d) For insulation materials with foil facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in paragraph (a) of this section. You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C236 (or the calibrated hot box). If you do this, you must follow the rules in paragraph (a) of this section on temperature, aging, and settled density.

(2) You can add up the tested R-value of the material and the R-value of the air space. To get the R-value for the air space, you must follow the rules in paragraph (c) of this section.

§ 460.6 "Representative thickness" testing.

All tests except aluminum foil tests must be done at a representative thickness for every thickness shown in a label, fact sheet, ad, or other promotional material. "Representative thickness" means a thickness at which the R-value per unit will vary no more than plus or minus 2% with increases in thickness. However, if the thickness shown in your label, fact sheet, ad, or promotional material is less than the representative thickness, then you can

test the insulation at the thickness shown.

§ 460.7 Which test version to use.

Use the version of the ASTM test method that was in effect when this regulation was promulgated. If ASTM changes a test method, the new version will automatically replace the old one in these rules 90 days after ASTM first publishes the change. However, the Commission's staff or a person affected by the change can petition the Commission during the 90-day period not to adopt the change or to reopen the proceeding to consider it further.

§ 460.8 R-value tolerances.

If you are an industry member, the R-value of any insulation you sell cannot be more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. However, if you are not a manufacturer, you can rely on the R-value data given to you by the manufacturer, unless you know or should know that the data is false or not based on the proper tests.

§ 460.9 What test records you must keep.

Manufacturers and testing labs must keep records of each item of information in the "Report" section of the ASTM test method that is used for a test. They must also keep the following records:

(a) The name and address of the testing lab that did each test.

(b) The date of each test.

(c) For manufacturers, the date each test report was received from a lab. For labs, the date each test report was sent to a manufacturer.

(d) For extruded polystyrene, polyurethane, and polyisocyanurate, the age (in days) of the specimen that was tested.

(e) For aluminum foil, the emissivity level that was found in the test.

Manufacturers who own their own testing labs need not keep records of the information in paragraph (c) of this section.

Keep these records for at least three years. If the documents show proof for your claims, the three years will begin again each time you make the claim.

Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

§ 460.10 How statements must be made.

All statements called for by this regulation must be made clearly and conspicuously. Among other things, you must follow the Commission's Enforcement Policy Statement for Foreign Language Advertising (July 24, 1973) (Appendix A). For TV ads, you must follow the Commission's Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising (October 21, 1970) (Appendix B). However, only the quoted statements required by §§ 460.18(a) and 460.19(b) must be made in a voice-over. Both of the above documents are in the appendix to this regulation.

EDITORIAL NOTE: The effective date of § 460.10 was temporarily stayed in part insofar as it applies to television advertisements, pending the initiation and completion of further rulemaking proceedings concerning affirmative disclosure requirements for television advertisements (See 45 FR 54702, Aug. 15, 1980.)

§ 460.11 Rounding off R-values.

R-values shown in labels, fact sheets, ads, or other promotional materials must be rounded to the nearest tenth. However, R-values of 10 or more may be rounded to the nearest whole number.

§ 460.12 Labels.

If you are a manufacturer, you must label all packages of your insulation. The labels must contain:

(a) The type of insulation.

(b) A chart showing these items:

(1) For mineral fiber batts and blankets: the R-value, length, width, thickness, and square feet of insulation in the package.

(2) For all loose-fill insulation except cellulose: The minimum thickness, maximum net coverage area, and minimum weight per square foot at R-values of 11, 19, and 22. You must also give this information for any additional R-values you list on the chart. Labels for these products must state

the minimum net weight of the insulation in the package.

(3) For loose-fill cellulose insulation: the minimum thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 13, 19, 24, 32, and 40. You must also give this information for any additional R-values you list on the chart. Labels for this product must state the minimum net weight of the insulation in the package.

(4) For boardstock: the R-value, length, width, and thickness of the boards in the package, and the square feet of insulation in the package.

(5) For aluminum foil: the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal. You can show the R-value for only one direction of heat flow if you clearly and conspicuously state that the foil can only be used in that application.

(6) For insulation materials with foil facings, you must follow the rule that applies to the material itself. For example, if you manufacture boardstock with a foil facing, follow paragraph (b)(4) of this section. You can also show the R-value of the insulation when it is installed in conjunction with an air space. This is its "system R-value." If you do this, you must clearly and conspicuously state the conditions under which the system R-value can be attained.

(7) For air duct insulation: The R-value, length, width, thickness, and square feet of insulation in the package.

(c) The following statement: "R means resistance to heat flow. The higher the R-value, the greater the insulating power."

(d) If installation instructions are included on the label or with the package, add this statement: "To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, follow the instructions carefully."

(e) If no instructions are included, add this statement: "To get the marked R-value, it is essential that this insulation be installed properly. If

you do it yourself, get instructions and follow them carefully. Instructions do not come with this package."

§ 460.13 Fact sheets.

If you are a manufacturer, you must give retailers and installers fact sheets for the insulation products you sell to them. Each sheet must contain what is listed here. You can add any disclosures that are required by federal laws, regulations, rules, or orders. You can add any disclosures that are required by State or local laws, rules, and orders, unless they are inconsistent with the provisions of this regulation. Do not add anything else.

Each fact sheet must contain these items:

(a) The name and address of the manufacturer. It can also include a logo or other symbol that the manufacturer uses.

(b) A heading: "This is ——— insulation." Fill in the blank with the type and form of your insulation.

(c) The heading must be followed by a chart:

(1) If § 460.12(b) requires a chart for your product's label, you must use that chart. For foamed-in-place insulations, you must show the R-value of your product at 3½ inches. You can also show R-values at other thicknesses.

(2) You can put the charts for similar products on the same fact sheet. For example, if you sell insulation boards or batts in three different thicknesses, you can put the label charts for all three products on one fact sheet. If you sell loose-fill insulation in two different bag sizes, you can put both coverage charts on one fact sheet, as long as you state which coverage chart applies to each bag size.

(d) For urea-based foam insulation, the chart must be followed by this paragraph:

"Foam insulation shrinks after it is installed. This shrinkage may significantly reduce the R-value you get."

However, you can lower your product's R-value to account for shrinkage. To do this, you must have reliable scientific proof of the extent of shrinkage for your product and of its effect on R-value. If you lower your product's

R-value, you need not make the above statement.

(e) For air duct insulation, the chart must be followed by this statement:

"The R-value of this insulation varies depending on how much it is compressed during installation."

(f) After the chart and any statement dealing with the specific type of insulation, ALL fact sheets must carry this statement, boxed, in 12-point type:

READ THIS BEFORE YOU BUY

What You Should Know About R-values

The chart shows the R-value of this insulation. R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, and your fuel use patterns and family size. If you buy too much insulation, it will cost you more than what you'll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

[44 FR 50242, Aug. 27, 1979, as amended at 45 FR 68928, Oct. 17, 1980]

§ 460.14 How retailers must handle fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are.

§ 466.15 How installers must handle fact sheets.

If you are an installer, you must have fact sheets for the insulation products you sell. Before customers agree to buy insulation from you, you must show them the fact sheet(s) for the type(s) of insulation they want.

§ 460.16

You can decide how to do this. For example, you can give each customer a copy of the fact sheet(s). You can keep the fact sheets in a binder, and show customers the binder before they agree to buy.

§ 460.16 What new home sellers must tell new home buyers.

If you are a new home seller, you must put the following information in every sales contract: The type, thickness, and R-value of the insulation that will be installed in each part of the house. There is an exception to this rule. If the buyer signs a sales contract before you know what type of insulation will be put in the house, or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out.

§ 460.17 What installers must tell their customers.

If you are an installer, you must give your customers a contract or receipt for the insulation you install. For all insulation except loose-fill and aluminum foil, the receipt must show the coverage area, thickness, and R-value of the insulation you installed. For loose-fill, the receipt must show those three items plus the number of bags used. For aluminum foil, the receipt must show the number and thickness of the air spaces, the direction of heat flow, and the R-value. The receipt must be dated and signed by the installer. To figure out the R-value of the insulation, use the data that the manufacturer gives you. Do not multiply the R-value for one inch by the number of inches you installed. If you put insulation in more than one part of the house, put the data for each part on the receipt. You can do this on one receipt, as long as you do not add up the coverage areas or R-values for different parts of the house.

§ 460.18 Insulation ads.

(a) If your ad gives an R-value, you must give the type of insulation and the thickness needed to get that R-value. Also, add this statement explaining R-values: "The higher the R-value, the greater the insulating

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power. Ask your seller for the fact sheet on R-values."

(b) If your ad gives a price, you must give the type of insulation, the R-value at a specific thickness, the statement explaining R-values in paragraph (a) of this section, and the coverage area for that thickness. If you give the price per square foot, you do not have to give the coverage area.

(c) If your ad gives the thickness of your insulation, you must give its R-value at that thickness and the statement explaining R-values in paragraph (a) of this section.

(d) If your ad compares one type of insulation to another, the comparison must be based on the same coverage areas. You must give the R-value at a specific thickness for each insulation, and the statement explaining R-values in paragraph (a) of this section. If you give the price of each insulation, you must also give the coverage area for the price and thickness shown. However, if you give the price per square foot, you do not have to give the coverage area.

(e) If your ad gives the R-value of urea-based foam insulation, you must add this statement: "Foam insulation shrinks after it is installed. This shrinkage may significantly reduce the R-value you get." However, you can lower your product's R-value to account for shrinkage. To do this, you must have reliable scientific proof of the extent of shrinkage for your product and of its effect on R-value. If you lower your product's R-value, you need not make the above statement.

EDITORIAL NOTE: The effective date of § 460.18 was temporarily stayed in part insofar as it applies to television advertisements, pending the initiation and completion of further rulemaking proceedings concerning affirmative disclosure requirements for television advertisements. (See 45 FR 54702, Aug. 15, 1980.)

§ 460.19 Savings claims.

(a) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim. For example, if you say that insulation can "slash" or "lower" fuel bills, or that insulation "saves money," you must have a rea-

sonable basis for the claim. Also, if you say that insulation can "cut fuel use in half," or "lower fuel bills by 30%," you must have a reasonable basis for the claim.

(b) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must make this statement about savings: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."

(c) If you say or imply that a combination of products can cut fuel bills or use, you must have a reasonable basis for the claim. You must make the statement about savings in paragraph (b) of this section. Also, you must list the combination of products used. They may be two or more types of insulation; one or more types of insulation and one or more other insulating products, like storm windows or siding; or insulation for two or more parts of the house, like the attic and walls. You must say how much of the savings came from each product or location. If you cannot give exact or approximate figures, you must give a ranking. For instance, if your ad says that insulation and storm doors combined to cut fuel use by 50%, you must say which one saved more.

(d) If your ad or other promotional material is covered by § 460.18 (a), (b), (c), or (d), and also makes a savings claim, you must follow the rules in §§ 460.18 and 460.19. However, you need not make the statement explaining R-value in § 460.18(a).

(e) Manufacturers are liable if they do not have a reasonable basis for their savings claims before the claim is made. If you are not a manufacturer, you are liable only if you know or should know that the manufacturer does not have a reasonable basis for the claim.

(f) Keep records of all data on savings claims for at least three years. For the records showing proof for claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

EDITORIAL NOTE: The effective date of § 460.19 was temporarily stayed in part insofar as it applies to television advertisements, pending the initiation and completion of further rulemaking proceedings concerning affirmative disclosure requirements for television advertisements. (See 45 FR 54702, Aug. 15, 1980.)

§ 460.20 R-value per inch claims.

In labels, fact sheets, ads, or other promotional materials, do not give the R-value for one inch or the "R-value per inch" of your product. There are two exceptions:

(a) You can do this if you suggest using your product at a one-inch thickness.

(b) You can do this if actual test results prove that the R-values per inch of your product does not drop as it gets thicker.

You can list a range of R-value per inch. If you do, you must say exactly how much the R-value drops with greater thickness. You must also add this statement: "The R-value per inch of this insulation varies with thickness. The thicker the insulation, the lower the R-value per inch."

§ 460.21 Government claims.

Do not say or imply that a government agency uses, certifies, recommends, or otherwise favors your product unless it is true. Do not say or imply that your insulation complies with a governmental standard or specification unless it is true.

§ 460.22 Tax claims.

Do not say or imply that your product qualifies for a tax benefit unless it is true.

§ 460.23 Other laws, rules, and orders.

(a) If an outstanding FTC Cease and Desist Order applies to you but differs from the rules given here, you can petition to amend to order.

(b) State and local laws and regulations that are inconsistent with, or frustrate the purposes of, the provisions of this regulation are preempted. However, a State or local government may petition the Commission, for good cause, to permit the enforcement of any part of a State or local law or reg-

ulation that would be preempted by this section.

(c) The Commission's three-day cooling-off rule stays in force.

§ 460.24 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

APPENDIX A—ENFORCEMENT POLICY STATEMENT FOR FOREIGN LANGUAGE ADVERTISING

Title 16—Commercial Practices

Chapter I—Federal Trade Commission

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

§ 14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.

The Federal Trade Commission has noted that, with increasing intensity, advertisers are making special efforts to reach foreign language-speaking consumers. As part of this special effort, advertisements, brochures and sales documents are being printed in foreign languages. In recent years the Commission has issued various cease-and-desist orders as well as rules, guides and other statements, which require affirmative disclosures in connection with certain kinds of representations and business activities. Generally, these disclosures are required to be "clear and conspicuous." Because questions have arisen as to the meaning and application of the phrase "clear and conspicuous" with respect to foreign language advertisements and sales materials, the Commission deems it appropriate to set forth the following enforcement policy statement:

(a) Where cease-and-desist orders as well as rules, guides and other statements require "clear and conspicuous" disclosure of certain information, that disclosure must be in the same language as that principally used in the advertisements and sales materials involved.

(b) Any respondent who fails to comply with this requirement may be the subject of a civil penalty proceeding for violating the terms of a Commission cease-and-desist order.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[38 FR 21494, Aug. 9, 1973]

APPENDIX B—ENFORCEMENT POLICY STATEMENT FOR CLEAR AND CONSPICUOUS DISCLOSURES IN TELEVISION ADVERTISING

.09 "Clear and conspicuous" disclosure.—The FTC issued an enforcement policy statement setting forth the standards it considers in determining whether, in fact, an affirmative disclosure in a television commercial is "clear and conspicuous." The FTC explained that in recent years it has issued various opinions, orders and trade regulation rules concerned with the need for affirmative disclosures in connection with various kinds of representations. In making a determination, the FTC said that it will take into consideration all the technical factors, such as the size of letters and the duration of disclosure, used in presenting the disclosure to a television audience, as well as the substance of the individual disclosure. The following standards should be met for a television disclosure to be deemed "clear and conspicuous":

(a) The disclosure should be presented simultaneously in both the audio and video portions of the television advertisement; (b) the video portion of the disclosure must contain letters of sufficient size so that it can be easily seen and read on all television sets, regardless of picture tube size; (c) the video portion of the disclosure should contain letters of a color or shade that readily contrast with the background, and the background should consist of only one color or shade; (d) no other sounds, including music, should occur during the audio portion of the disclosure; (e) the video portion of the disclosure should appear on the screen for a sufficient duration to enable it to be completely read by the viewer; and (f) the audio and video portions of the disclosure should immediately follow the specific sales representations to which they relate and should occur each time the representation is presented during the advertisement; in cases where a disclosure is required, but is not linked to a specific representation, it should appear in immediate conjunction with the major sales theme of the advertisement. Television advertisers should also consider the audience to whom the disclosure is directed in order to assure that persons (such as children) can understand the full meaning of the disclosure. If securing this understanding is impractical, then the advertisements containing such representations should not be used on television. *FTC Statement of Enforcement Policy*, October 21, 1970.

Trade Regulation Reports, Volume 2, ¶ 7569 at 12,166 (1971)

EDITORIAL NOTE: The effective date of Appendix B was temporarily stayed in part insofar as it applies to television advertisements, pending the initiation and comple-

tion of further rulemaking proceedings concerning affirmative disclosure requirements for television advertisements. (See 45 FR 54702, Aug. 15, 1980.)

SUBCHAPTER E—RULES, REGULATIONS, STATEMENT OF GENERAL POLICY OR INTERPRETATION AND EXEMPTIONS UNDER THE FAIR PACKAGING AND LABELING ACT

PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT

AUTHORITY: Secs. 4, 6, 80 Stat. 1297, 1299, 1300; 15 U.S.C. 1453, 1454, 1455.

SOURCE: 33 FR 4718, Mar. 19, 1968, unless otherwise noted.

SCOPE

Sec.

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500.19 Abbreviations.

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500.23 Representations of servings, uses, applications.

500.24 Multiunit packages.

500.25 Variety packages.

500.26 Combination packages.

SCOPE

§ 500.1 Scope of the regulations in this part.

The regulations in this part establish requirements for labeling of consumer commodities as hereinafter defined with respect to identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and net quantity of servings, uses, or applications represented to be present.

DEFINITIONS

§ 500.2 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The term "Act" means the "Fair Packaging and Labeling Act" (Pub. L. 89-755, approved Nov. 3, 1966; 80 Stat. 1296 *et seq.*; 15 U.S.C. 1451 *et seq.*).

(b) The term "regulation" or "regulations" means regulations promulgated by the Commission pursuant to sections 4, 5, and 6 of the Act (15 U.S.C. 1453, 1454, 1455).

(c) The term "consumer commodity" or "commodity" means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. For purposes of the regulations in this part the term "consumer commodity" does not include any food, drug, device or cosmetic as defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); any meat or meat product, poultry or poultry product, or tobacco

or tobacco product, any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Virus-Serum-Toxin Act (21 U.S.C. 151-157); any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(d) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that commodity to retail purchasers. For purposes of the regulations in this part the term "package" does not include shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof unless used in retail display; shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236), the Act of August 31, 1913 (39 Stat. 673, as amended; 15 U.S.C. 251-256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257-257i); or transparent wrappings or containers which do not bear written, printed, or graphic matter obscuring any part of the label information required by this part.

(e) The term "label" means any written, printed, or graphic matter affixed to or appearing upon any consumer commodity or affixed to or appearing upon a package containing any consumer commodity; except that (1) an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the

repetition of label information required by this part, and, (2) for the purposes of the regulations in this part the term "label" does not include written, printed, or graphic matter affixed to or appearing upon commodities, or affixed to or appearing upon containers or wrappers for commodities sold or distributed to industrial or institutional users.

(f) The term "person" includes any firm, corporation or association.

(g) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States, not organized with a legislature, but shall not include exports to foreign countries.

(h) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel must be large enough to accommodate all the mandatory label information required to be placed thereon by this part without obscuring designs, vignettes, or crowding. This definition does not preclude utilization of alternate principal display panels on the label of a package, but alternate principal display panels must duplicate the information required to be placed on the principal display panel by this part. This definition does not preclude utilization of the container closure as the surface bearing the principal display panel if that label location is the one most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel of a label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel of a consumer commodity marketed in a decorative type container, or a container having a capacity of $\frac{1}{4}$ ounce or less, may be considered to be a tear-

away tag or tape affixed to the container and bearing the mandatory label information as required by this part, but the type size of the net quantity of contents statement shall be governed by the dimensions of the container itself. The principal display panel of a consumer commodity marketed on a display card to which the immediate container of the commodity is affixed may be considered to be the display panel of the card, and the type size of the net quantity of contents statement is governed by the dimensions of the display card.

(i) The term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, that is, packages with no fixed weight pattern.

[33 FR 4718, Mar. 19, 1968; 33 FR 4922, Mar. 23, 1968]

GENERAL REQUIREMENTS

§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedure.

(a) No person engaged in the packaging or labeling of any consumer commodity for distribution in commerce, and no person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, shall distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of the Act and of the regulations in this part.

(b) Persons engaged in business as wholesale or retail distributors of consumer commodities shall be subject to the Act and the regulations in this part to the extent that such persons are engaged in the packaging or labeling of consumer commodities, or prescribe or specify by any means the manner in which such consumer commodities are packaged or labeled.

(c) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act (15 U.S.C.

1454(b)), shall, upon being prepared for distribution in commerce or for sale at retail, and before being distributed in commerce or offered for sale at retail, be labeled in accordance with the requirements of the Act and the regulations in this part.

(d) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act, shall bear a label specifying the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and the net quantity per serving, use, or application, where there is a label representation as to the number of servings, uses, or applications obtainable from the commodity.

(e) Regulations will be promulgated by the Commission exempting particular consumer commodities from one or more of the requirements of section 4 of the Act and the regulations thereunder to the extent and under such conditions as are consistent with the declared policy of the Act whenever the Commission finds that, because of the nature, form, or quantity of the particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable is impracticable or is not necessary for the adequate protection of consumers. Proceedings for the promulgation of such exempting regulations may be commenced by the Commission upon its own initiative or pursuant to petition filed with the Secretary by any interested person or group stating reasonable grounds for the proposed exemption, pursuant to § 1.15 of this chapter of the Commission's general procedures.

[33 FR 4718, Mar. 19, 1968, as amended at 34 FR 14730, Sept. 24, 1969]

IDENTITY

§ 500.4 Statement of identity.

(a) The principal display panel of a consumer commodity shall bear a specification of the identity of the commodity.

(b) Such specification of identity shall comprise a principal feature of the principal display panel, shall be in

such type size and so positioned as to render it easily read and understood by the consumer, and shall be in lines generally parallel to the base on which the package or commodity rests as it is designed to be displayed.

(c) Such specification of identity shall be in terms of:

(1) The name now or hereafter specified in or required by any applicable Federal law or regulation; or in the absence thereof,

(2) The common or usual name of the commodity; or in the absence thereof,

(3) The generic name or in other appropriately descriptive terms such as a specification which includes a statement of function.

(d) The specification of identity shall not be false, misleading, or deceptive in any respect. Ingredients or components which are not present in the commodity in a substantial or significantly effective amount may not be mentioned in the specification of identity; except that a component present in a formulation in substantial and effective amounts, but not present in the final product due to conversion or transformation into a different entity (which different entity is present in the final product), may be mentioned in the specification of identity.

NAME AND PLACE OF BUSINESS

§ 500.5 Name and place of business of manufacturer, packer, or distributor.

(a) The label of a consumer commodity shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor. Where the consumer commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity; such as "Manufactured for _____," "Distributed by _____," or any other wording that expresses the facts.

(b) The requirement for declaration of the manufacturer, packer, or distributor shall in the case of a corporation be deemed to be satisfied only by the actual corporate name, which may

be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(c) The statement of the place of business shall include the street address, city, State, and Zip Code; however the street address may be omitted if it is shown in a current city directory or telephone directory.

(d) If a person manufactures, packs, or distributes a consumer commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such consumer commodity was manufactured or packed or is to be distributed, unless such statement would be misleading.

(e) Standard abbreviations may be used in complying with the requirements of this section.

NET QUANTITY OF CONTENTS

§ 500.6 Net quantity of contents declaration, location.

(a) The label of a consumer commodity shall bear a declaration of the net quantity of contents separately and accurately stated on the principal display panel.

(b) The declaration of net quantity shall appear as a distinct item on the principal display panel, shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and, shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "when packed," "minimum," or words of similar import. The declaration of net quantity shall be separated (by at least a space equal to twice the width of the letter "N" of the style of type used in the net quantity statement) from other printed label information appearing to the left or right of the declaration. It shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package or com-

modity rests as it is designed to be displayed: *Provided, That:*

(1) On consumer commodities having a principal display panel of 5 square inches or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part, and

(2) The requirements as to separation, location, and type size, specified in this part are waived with respect to variety and combination packages as defined in this part.

[33 FR 4718, Mar. 19, 1968, as amended at 35 FR 13644, Aug. 27, 1970]

§ 500.7 Net quantity of contents, method of expression.

The net quantity of contents shall be expressed in terms of weight, measure, numerical count, or a combination of numerical count and weight, size, or measure, so as to give accurate information regarding the net quantity of contents thereof, and thereby facilitate value comparisons by consumers. The net quantity of contents statement shall be in terms of fluid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, or viscous, or a mixture of solid and liquid. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight, or a solid, semisolid, or viscous product by fluid measure, numerical count, and/or size, or (as in the case of lawn and plant care products) by cubic measure, it may be used, when such declaration provides sufficient information to facilitate value comparisons by consumers. The declaration may appear in more than one line of print or type.

[33 FR 4718, Mar. 19, 1968, as amended by 35 FR 13643, Aug. 27, 1970]

§ 500.8 Units of weight and measure.

(a) Statements of weight shall be in terms of avoirdupois pound and ounce.

(b) Statements of fluid measure shall be in terms of the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof and shall (except in the case of petroleum products, for which the declaration

shall express the volume at 60° Fahrenheit (15.6° Centigrade)) express the volume at 68° Fahrenheit (20° Centigrade).

(c) Statements of linear measure shall be in terms of yards, feet, and inches.

(d) Statements of measure of area shall be in terms of square yards, square feet, and square inches.

(e) Statements of dry measure shall be in terms of the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof.

(f) Statements of cubic measure shall be in terms of the cubic yard, cubic foot, and cubic inch.

§ 500.9 Units of weight, how expressed.

(a) The term "net weight" shall be used in stating the net quantity of contents in terms of weight. With the exception of random packages, if the statement of quantity is in terms of weight, it shall be identified as such in each instance and expressed as follows:

(1) If less than 1 pound, in terms of ounces. (Example: "Net Weight 12 oz.")

(2) If at least 1 pound but less than 4 pounds, in ounces followed in parentheses by a declaration in whole pounds, with any remainder in terms of ounces or common or decimal fractions of the pound. (Examples: "Net Wt. 24 oz. (1 lb. 8 oz.);" or "Net Wt. 24 oz. (1½ lb.);" or "Net Wt. 24 oz. (1.5 lb.);")

(3) If 4 pounds or more, in terms of whole pounds, with any remainder in terms of ounces or common or decimal fractions of the pound. (Examples: "Net Weight 5 pounds 4 ounces" or "Net Wt. 5¼ lbs." or "Net Wt. 5.25 lbs.")

(b) If the net quantity of contents declaration appears on a random package, it may, when the net weight exceeds 1 pound, be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two decimal places. When the net weight does not exceed 1 pound, the declaration on the random package may be in terms of decimal fractions of the pound in lieu of ounces. (Exam-

ples: "Net Wt. 0.75 lb." and "Net Weight 1.05 pounds".) Such decimal declaration shall be exempt from the type size, dual declaration and placement requirements of section 4(a) of the Act if the accurate statement of net weight is presented prominently and conspicuously on the principal display panel of the package.

(c) It is sufficient to distinguish avoirdupois ounce from fluid ounce through association of terms. (Examples: "Net Wt. 6 oz." vs. "6 fl. oz." or "Net Contents 6 fl. oz.")

§ 500.10 Units of fluid measure, how expressed.

(a) Use of the terms "net" or "net contents" is optional.

(b) Declaration of net quantity of contents in terms of fluid measure shall be identified as such in each instance and expressed as follows:

(1) If less than 1 pint, in terms of fluid ounces. (Example: "Net Contents 8 fl. oz.")

(2) If at least 1 pint but less than 1 gallon, in terms of fluid ounces followed in parentheses by a declaration of the largest whole unit (quarts, quarts and pints, or pints, as appropriate), with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart. (Examples: "Net 32 fl. oz. (1 qt.)" or "Net contents 56 fluid oz. (1 quart 1½ pints)" or as "Net 56 fluid oz. (1 qt. 1 pt. 8 oz.)", but not in terms of quart and ounce such as "Net 56 fluid oz. (1 quart 24 ounces)".)

(3) If 1 gallon or more, in terms of the largest whole unit (gallons followed by common or decimal fractions of a gallon or by the next smaller whole unit or units viz, quarts and pints) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart. (Examples: "Net contents 2½ gal.", "Contents 2.5 gal.", or "Net contents 2 gallons 2 quarts" but not as "2 gallons 4 pints".)

§ 500.11 Measurement of commodity length, how expressed.

Declaration of net quantity in terms of commodity length shall be expressed as follows:

(a) If less than 1 foot, in terms of inches and fractions thereof.

(b) If at least 1 foot but less than 4 feet, in terms of inches followed in parentheses by a declaration in the largest whole unit (a yard or foot) with any remainder in terms of inches or common or decimal fractions of the foot or yard.

(c) If 4 feet or more, in terms of feet followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches, except that it shall be optional to express the length in the preceding manner followed by a statement in parentheses of the length in terms of inches.

[36 FR 9625, May 27, 1971, as amended at 36 FR 10781, June 3, 1971]

§ 500.12 Measurement of commodities by length and width, how expressed.

For bidimensional commodities (including roll-type commodities) measured in terms of commodity length and width, the declaration of net quantity of contents shall be expressed in the following manner:

(a) The declaration of net quantity for bidimensional commodities having a width of more than 4 inches shall:

(1) When the commodity has an area of less than 1 square foot be expressed in terms of length and width in linear inches and fractions thereof.

(2) When the commodity has an area of 1 square foot or more, but less than 4 square feet, be expressed in terms of square inches, followed in parentheses by the length and width in the largest whole unit (yard or foot) with any remainder in inches or common or decimal fractions of the yard or foot except that a dimension of less than 2 feet may be stated in inches within the parenthetical. Commodities consisting of usable individual units (e.g., paper napkins) while requiring a declaration of unit area need not declare the total area of all such individual units.

(3) When the commodity has an area of 4 square feet or more, be expressed in terms of square feet, followed in parentheses by the length

and width in the largest whole units (yards or feet) with any remainder in terms of inches or common or decimal fractions of the foot or yard except that a dimension of less than 2 feet may be stated in inches within the parenthetical.

(4) For any commodity for which the quantity of contents is required by paragraph (a) (2) or (3) of this section to include a declaration of the linear dimensions, the quantity of contents, in addition to being declared in the manner prescribed by the appropriate provision of this regulation, may also include, after the statement of the linear dimensions in the largest unit of measurement, a parenthetical declaration of the linear dimensions of said commodity in terms of inches. (Example: "25 SQ. FT. (12 IN. x 8.33 YD.) (12 IN. x 300 IN.).")

(b) The declaration of net quantity for bidimensional commodities having a width of 4 inches or less shall be expressed in terms of width in inches followed by length in the largest whole unit (yard or foot) with any remainder in terms of the common or decimal fractions of the yard or foot, except that it shall be optional to express the length in the largest whole unit followed by a statement in parentheses of length in inches, or to express the length in inches followed by a statement in parentheses of length in the largest whole unit. (Example: "2 INCHES x 10 YARDS", "2 INCHES x 10 YARDS (360 INCHES)", or "2 INCHES x 360 INCHES (10 YARDS)".

[36 FR 9626, May 27, 1971]

§ 500.13 Measurement of commodities by area measure only, how expressed.

Declaration of net quantity for commodities measured in terms of area measure only shall be expressed as follows:

(a) If less than 1 square foot, in terms of square inches and fractions thereof.

(b) If at least 1 square foot but less than 4 square feet, in terms of square inches followed in parentheses by a declaration in square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

(c) If 4 square feet or more, in terms of the largest appropriate whole unit (square yards, square yards and square feet, or square feet) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard.

§ 500.14 Statements of cubic measure and dry measure.

Statements of cubic measure and dry measure do not require a dual declaration of net quantity of contents, but shall be expressed in terms most appropriate to the providing of accurate information as to the net quantity of contents, and to the facilitating of value comparisons by consumers. When the content declaration on a commodity sold in compressed form is stated in terms of cubic measure there may also be a statement indicating the amount of material from which the final product was compressed. Such statement shall not exceed the actual amount of material that can be recovered.

§ 500.15 Units of count, more than one ply.

If the commodity is in distinct usable units made up of one or more components or ply, the statement of net quantity of contents shall (in addition to complying with the requirements of linear and area measurement declaration for each unit as specified in § 500.12 of this part) include the number of ply and the total number of usable units. (Examples: "100 2-ply facial tissues, 8½ inches x 10 inches".) For the purposes of this section, roll type commodities (e.g. paper towels), irrespective of perforations, shall not be considered to be usable units, and shall be labeled in terms of total area measurement and the number of ply. Such area measurement, however, shall be supplemented by a count statement and the dimensions of a single unit.

§ 500.15a Measurement of container type commodities, how expressed.

Notwithstanding other provisions of this Part 500 of the regulations pertaining to the expression of net quantity of contents by measurement, com-

modities designed and sold at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled in accordance with the following paragraphs:

(a) The declaration of net quantity for container commodities shall be expressed as follows:

(1) For bag type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise):

(i) When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of 2 feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot. (Example: "25 bags, 17 in. x 20 in." or "100 bags, 20 in. x 2 ft. 6 in.", or "50 bags, 20 in. x 2½ ft.")

(ii) When the unit bag is gusseted, the dimensions will be expressed as width, depth and length, in terms of inches except that any dimension of 2 feet or more will be expressed in feet with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: "25 bags, 17 in. x 4 in. x 20 in.", or "100 bags, 20 in. x 12 in. x 2½ ft.")

(2) For other square, oblong, rectangular or similarly shaped containers, in terms of count followed by length, width, and depth except depth need not be listed when less than 2 inches. (Example: "2 cake pans, 8 in. x 8 in.", or "roasting pan, 12 in. x 8 in. x 3 in.")

(3) For circular or other generally round shaped containers, except cups, and the like, in terms of count followed by diameter and depth except depth need not be listed when less than 2 inches. (Example: "4 pie pans, 8 in. diameter", or "2 cake pans, 8 in. diameter x 4 in.")

(b) When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

(1) Liquid measure for containers which are intended to be used for liq-

uids, semi-solids, viscous materials or mixtures of solids and liquids. The expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce) with any remainder in terms of the common or decimal fraction of that unit. (Example: Freezer Boxes: "4 boxes, 1 qt. capacity, 6 in. x 6 in. x 4 in.")

(2) Dry measure for containers which are intended to be used for solids. The expressed capacity will be stated in terms of the largest whole unit (bushel, peck) with any remainder in terms of the common or decimal fraction of that unit. (Example: Leaf Bags: "8 bags, 6 bushel capacity, 4 feet x 5 feet".)

(3) Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent container. (Example: Garbage Can Liners: "10 liners, 2 ft. 6 in. x 3 ft. 1 in., fits up to 30 gallon cans".)

(c) Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit. (Example: "24 cups, 6 fl. oz. capacity".)

(d) For purposes of this section, the use of the terms "capacity," "diameter," and "fluid" is optional.

[34 FR 14731, Sept. 24, 1969; 34 FR 18160, Nov. 13, 1969]

§ 500.16 Fractions.

A statement of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that (a) if there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed, and (b) if linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places. If a statement includes

small fractions, smaller variations in the actual size or weight of the commodity will be permitted, as provided in § 500.22 of this part, than in cases where larger fractions or whole numbers are used.

[34 FR 14730, Sept. 24, 1969]

§ 500.17 Conspicuousness.

The statement of net quantity of contents shall appear in conspicuous and easily legible boldface type or print in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a statement of net quantity blown, embossed, or molded on a glass or plastic surface is permissible when all label information is so formed on the surface.

§ 500.18 Type size in relationship to the area of the principal display panel.

(a) The statement of net quantity of contents shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package or commodity and shall be uniform for all packages or commodities of substantially the same size. For this purpose, "area of the principal display panel" means the area of the side or surface that bears the principal display panel, exclusive of tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles and jars. This area shall be:

(1) In the case of a rectangular package or commodity where one entire side properly can be considered to be the principal display panel side, the product of the height times the width of that side;

(2) In the case of a cylindrical or nearly cylindrical container or commodity, 40 percent of the product of the height of the container or commodity times the circumference; and

(3) In the case of any otherwise shaped container or commodity, 40 percent of the total surface of the container or commodity: *Provided, however*, That where such container or commodity presents an obvious "principal display panel" such as the top of a triangular or oval shaped container, the area shall consist of the entire top surface.

(b) With area of principal display panel defined as above, the type size in relationship to area of that panel shall comply with the following specifications:

(1) Not less than $\frac{1}{16}$ inch in height on packages the principal display panel of which has an area of 5 square inches or less.

(2) Not less than $\frac{1}{8}$ inch in height on packages the principal display panel of which has an area of more than 5 but not more than 25 square inches.

(3) Not less than $\frac{3}{16}$ inch in height on packages the principal display panel of which has an area of more than 25 but not more than 100 square inches.

(4) Not less than $\frac{1}{4}$ inch in height on packages the principal display panel of which has an area of more than 100 square inches, except not less than $\frac{1}{2}$ inch in height if the area is more than 400 square inches.

(c) Where the statement of net quantity of contents is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in paragraph (b) of this section shall be increased by $\frac{1}{16}$ of an inch.

(d) Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(e) The ratio of height to width of a letter shall not exceed a differential of 3 units to 1 unit (no more than 3 times as high as it is wide).

(f) When fractions are used, each component shall meet one-half the minimum height standards.

[33 FR 4718, Mar. 19, 1968; 33 FR 4922, Mar. 23, 1968, as amended at 34 FR 8200, May 27, 1969]

§ 500.19 Abbreviations.

The following abbreviations and none other may be employed in the required net quantity declaration:

Inch—in.
Feet or foot—ft.
Fluid—fl.
Liquid—liq.
Ounce—oz.

Gallon—gal.
Pint—pt.
Pound—lb.
Quart—qt.
Square—sq.
Weight—wt.
Yard—yd.
Avoirdupois—avdp.
Cubic—cu.

(Periods and plural forms shall be optional.)

§ 500.20 Supplemental statements.

Nothing contained in the regulations in this part shall prohibit supplemental statements, at locations other than the principal display panel, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package. (Examples of prohibited language are: "Giant Quart," "Full Gallon," "When Packed," "Minimum," or words of similar import.) Required dual declarations and combination declarations of net quantity of contents (for example, a combination of net weight plus numerical count, numerical count plus dimensions of the commodity, etc.) are not regarded as supplemental net quantity statements and shall be located on the principal display panel. Dilution directions or other similar directions for use are not regarded as supplemental net quantity statements and may be located on the principal display panel. Size characterizations in compliance with standards promulgated under section 5(c)(1) of the Act may appear on the principal display panel.

§ 500.21 Metric equivalent.

A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental net quantity statement and an accurate statement of the net quantity of contents in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels. Standard metric abbreviations may be used.

§ 500.22 Net quantity, average quantity, permitted variations.

(a) The statement of net quantity of contents shall accurately reveal the quantity of the commodity in the container exclusive of wrappers and other material packed therewith: *Provided*, That in the case of a commodity packed in a container designed to deliver the commodity under pressure, the statement shall declare the net quantity of the contents that will be expelled when the instructions for use are followed. The propellant is included in the net quantity statement.

(b) Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the commodity is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure.

(c) Variations from the stated weight, measure or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages which occur in good packaging practice: *Provided*, That such variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the commodity is below the quantity stated, and no unreasonable shortage in any package will be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage. Variations from stated quantity of contents shall not be unreasonably large.

§ 500.23 Representations of servings, uses, applications.

(a) The label of any packaged consumer commodity which bears a representation as to the number of servings, uses, or applications of such commodity contained in such package shall bear in immediate conjunction therewith, and in letters the same size as those used for such representation, a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving, use, or application: *Provided*, That such state-

ment may be expressed in terms that differ from terms used in the required statement of net contents (e.g., cupsful, tablespoonful, etc.), when such differing terms describe a constant quantity. Such statement may not be misleading in any particular.

(b) Representations as to the total amount of object or objects to which the commodity may be applied or upon which or in which the commodity may be used, will not be considered to be representations as to servings, uses, or applications, if such amount is expressed in terms of standard units of weight, measure, size or count.

(c) If there exists a voluntary product standard promulgated pursuant to the procedures found in Part 10, Title 15, Code of Federal Regulations, by the Department of Commerce, quantitatively defining the meaning of the terms "serving," "use," or "application" with respect to a particular consumer commodity, then any label representation as to the number of servings, uses, or applications in such packaged consumer commodity shall correspond with such quantitative definition. (Copies of published standards will be available upon request from the National Bureau of Standards, Department of Commerce, Washington, DC 20234.)

§ 500.24 Multiunit packages.

(a) A multiunit package is a package intended for retail sale, containing two or more individual packaged or labeled units of an identical commodity in the same quantity. The declaration of net quantity of contents of a multiunit package shall be expressed as follows:

(1) The number of individual packaged or labeled units;

(2) The quantity of each individual packaged or labeled unit including dual declarations when applicable; and

(3) The total quantity of the multiunit package which may omit the parenthetical quantity statement of a dual quantity representation.

EXAMPLES: Soap bars: "6 Bars, Net Wt. 3.4 ozs. each, Total Net Wt. 20.4 ozs." Facial Tissues: "10 Packs, each 25 two-ply tissues, 9.7 in. x 8.2 in., Total 250 Tissues."

(b) The individual packages or labeled units of a multiunit package, when intended for individual sale sep-

arate from the multiunit package, shall be labeled in compliance with the regulations under this Part 500 applicable to that package.

(c) A multiunit package containing unlabeled individual packages which are not intended for retail sale separate from the multiunit package may contain in lieu of the requirements of paragraph (a) of this section, a declaration of quantity of contents expressing the total quantity of the multiunit package without regard for inner packaging. For such multiunit packages it shall be optional to include a statement of the number of individual packages when such a statement is not otherwise required by the regulations.

EXAMPLES: Deodorant Cakes: "5 Cakes, Net Wt. 4 ozs. each, Total Net Wt. 20 ozs." or "5 Cakes, Total Net Wt. 20 ozs. (1 lb. 4 ozs.)."

Soap Packets: "10 Packets, Net Wt. 2 ozs. each, Total Net Wt. 20 ozs.", or "Net Wt. 20 ozs. (1 lb. 4 ozs.)." or "10 Packets, Total Net Wt. 20 ozs. (1 lb. 4 ozs.)."

[35 FR 13644, Aug. 27, 1970]

§ 500.25 Variety packages.

(a) A variety package is a package intended for retail sale, containing two or more individual packages or units of similar but not identical commodities. Commodities which are generically the same but which differ in weight, measure, volume, appearance or quality are considered similar but not identical. The declaration of net quantity for a variety package will be expressed as follows:

(1) The number of units for each identical commodity followed by the weight, volume or measure of that commodity including dual declarations when applicable; and

(2) The total quantity by weight, volume, measure, and count, as appropriate, of the variety package. Dual declarations may be omitted from the total quantity statement.

The statement of total quantity shall appear as the last item in the declaration of net quantity and shall not be of greater prominence than other terms used.

EXAMPLES:

- (i) "2 sponges 4½ ins. x 4 ins. x ¾ in.
11 sponges 4½ ins. x 8 ins. x ¾ in.

14 sponges 2 1/4 ins. x 4 ins. x 1/2 in.

Total 7 sponges"		
(ii)	"2 soap bars	Net Wt. 3.2 ozs. ea.
	1 soap bar	Net Wt. 5.0 ozs.
Total	3 bars	Net Wt. 11.4 ozs."
(iii)	Liquid Shoe Polish:	"1 Brown 3 fl. ozs.
		1 Black 3 fl. ozs.
		1 White 5 fl. ozs.
		Total 11 fl. ozs."
(iv)	Picnic Ware:	"34 spoons
		33 forks
		33 knives
		Total 100 pieces"

(b) When the individual units in a variety package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be labeled in compliance with the applicable regulations under this Part 500.

[35 FR 13644, Aug. 27, 1970]

§ 500.26 Combination packages.

(a) A combination package is a package intended for retail sale, containing two or more individual packages or units of dissimilar commodities. The declaration of net quantity for a combination package will contain an expression of weight, volume, measure or count or a combination thereof, as appropriate for each individual package or unit; provided, that the quantity statements for identical packages or units shall be combined. Dual declarations will be included where applicable.

EXAMPLES.

(1) Lighter fluid and flints: "2 cans—each 8 fl. ozs.; 1 package—8 flints."

(2) Sponges & Cleaner: "2 sponges each 4 in. x 6 in. x 1 in.; 1 box cleaner—Net Wt. 6 ozs."

(3) Picnic Pack: "20 spoons, 10 knives and 10 forks, 10 2-ply napkins 10 ins. x 10 ins. 10 cups—6 fl. ozs."

(b) When the individual units in a combination package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be in compliance with the applicable regulations under this Part 500.

[35 FR 13644, Aug. 27, 1970]

PART 501—EXEMPTIONS FROM REQUIREMENTS AND PROHIBITIONS UNDER PART 500

Sec.

501.1 Camera film.

501.2 Christmas tree ornaments.

501.3 Replacement bags for vacuum cleaners.

501.4 Chamois.

501.5 Paper table covers, bedsheets, pillowcases.

501.6 Cellulose sponges, irregular dimensions.

501.7 Candles.

501.8 Solder.

AUTHORITY: Secs. 5, 6, 80 Stat. 1298, 1299, 1300; 15 U.S.C. 1454, 1455, unless otherwise noted.

§ 501.1 Camera film.

Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of Part 500 of this chapter which specify how measurement of commodities should be expressed, provided:

(a) The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of lineal feet of usable film contained therein.

(b) The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurements of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement. (Example: "36 exposures, 36 x 24 mm. or 12 exposures, 2 1/4 x 2 1/4 inches".)

[35 FR 75, Jan. 3, 1970]

§ 501.2 Christmas tree ornaments.

Christmas tree ornaments packaged and labeled for retail sale are exempt from the net quantity statement requirements of Part 500 of this chapter which specify how the net quantity statement should be expressed, provided:

(a) The quantity of contents is expressed in terms of numerical count of the ornaments, and

(b) The ornaments are so packaged that the ornaments are clearly visible to the retail purchaser at the time of purchase.

§ 501.3

[35 FR 9108, June 12, 1970]

§ 501.3 Replacement bags for vacuum cleaners.

Replacement bags for vacuum cleaners, packaged and labeled for retail sale are exempt from the requirements of § 500.15a of this chapter which specifies how measurement of container type commodities should be expressed, provided:

(a) The quantity of contents is expressed in terms of numerical count of the bags;

(b) A statement appears on the principal display panel of the package accurately identifying the make and model of the vacuum cleaner or cleaners in which the replacement bag is intended to effectively function;

(c) The name and place of business of the manufacturer, packer, or distributor of the replacement bags, in addition to the requirements of § 500.5 of this chapter, appears on the principal display panel of the package.

[35 FR 10510, June 27, 1970]

§ 501.4 Chamois.

Chamois packaged or labeled for retail sale is exempt from the requirements of § 500.13 of this chapter which specifies how measurement of commodities by area measure should be expressed. *Provided:*

(a) The quantity of contents for full skins is expressed in terms of square feet with any remainder in terms of the common or decimal fraction of the square foot.

(b) The quantity of contents for cut skins of any configuration is expressed in terms of square inches and fractions thereof. Where the area of a cut skin is at least one square foot or more, the statement of square inches shall be followed in parentheses by a declaration in square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

[35 FR 19572, Dec. 24, 1970]

§ 501.5 Paper table covers, bedsheets, pillowcases.

Table covers, bedsheets, and pillowcases, fabricated from paper, are exempt from the requirements of

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§ 500.12 of this chapter which specifies the expression of measurement of bi-dimensional commodities: *Provided*, That such commodities shall clearly present their actual length and width in terms of inches.

[35 FR 19077, Dec. 17, 1970]

§ 501.6 Cellulose sponges, irregular dimensions.

Variety packages of cellulose sponges of irregular dimensions, are exempted from the requirements of § 500.25 of this chapter, provided:

(a) Such sponges are packaged in transparent packages which afford visual inspection of the varied sizes, shapes, and irregular dimensions; and

(b) The quantity of contents declaration is expressed as a combination of count accompanied by the term "irregular dimensions." Example: "10 Assorted Sponges—Irregular dimensions."

[35 FR 18510, Dec. 5, 1970]

§ 501.7 Candles.

Tapered candles and irregularly shaped decorative candles which are either hand dipped or molded are exempt from the requirements of § 500.7 of this chapter which specifies that the net quantity of contents shall be expressed in terms of count and measure (e.g., length and diameter), to the extent that diameter of such candles need not be expressed. The requirements of § 500.7 of this chapter for these candles will be met by an expression of count and length or height in inches.

[36 FR 5690, Mar. 26, 1971]

§ 501.8 Solder.

Solder and brazing alloys containing precious metals when packaged and labeled for retail sale are exempt from the net quantity statement requirements of Part 500 of this chapter which specify that all statements of weight shall be in terms of avoirdupois pound and ounce provided the net quantity declaration is stated in terms of the troy pound and ounce and the term "troy" is used in each declaration.

[37 FR 4429, Mar. 3, 1972]

PART 502—REGULATIONS UNDER SECTION 5(C) OF THE FAIR PACKAGING AND LABELING ACT

SCOPE

Sec.

502.1 Scope of the regulations in this part.

DEFINITIONS

502.2 Terms defined.

GENERAL REQUIREMENTS

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CHARACTERIZATION OF PACKAGE SIZE

502.4-502.99 [Reserved]

RETAIL SALE PRICE REPRESENTATIONS

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COMMON NAME AND INGREDIENT LISTING

502.200-502.299 [Reserved]

NONFUNCTIONAL-SLACK-FILL

502.300-502.399 [Reserved]

AUTHORITY: Secs. 5, 6, 80 Stat. 1299, 1300; 15 U.S.C. 1454, 1455.

SOURCE: 36 FR 12286, June 30, 1971, unless otherwise noted.

SCOPE

§ 502.1 Scope of the regulations in this part.

The regulations in this part establish requirements for labeling of consumer commodities with respect to use of package size characterizations, retail sale price representations, and common name and ingredient listing. Additionally, the regulations in this part establish criteria to prevent non-functional-slack-fill of packages containing consumer commodities.

DEFINITIONS

§ 502.2 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The terms "Act", "regulation" or "regulations", "consumer commodity", "package", "label", "person", "commerce", "principal display panel", and "random package" have the same

meaning as those terms are defined under Part 500 of this chapter.

(b) The term "packager" and "labeler" means any person engaged in the packaging or labeling of any consumer commodity for distribution in commerce or any person, other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire, engaged in the distribution in commerce of any packaged or labeled consumer commodity; except persons engaged in business as wholesale or retail distributors of consumer commodities are not included unless such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(c) The terms "ordinary and customary" and "regular" when used with the term "price" means the price at which a consumer commodity has been openly and actively sold in the most recent and regular course of business in a particular market or trade area for a reasonably substantial period of time, i.e., a 30-day period. For consumer commodities which fluctuate in price, the ordinary and customary price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period.

GENERAL REQUIREMENTS

§ 502.3 Prohibited acts.

(a) No person engaged in the packaging or labeling of any consumer commodity for distribution in commerce, and no person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, shall distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of the Act and of the regulations in this part.

(b) Persons engaged in business as wholesale or retail distributors of consumer commodities shall be subject to the Act and the regulations in this

part to the extent that such persons are engaged in the packaging or labeling of consumer commodities, or prescribe or specify by any means the manner in which such consumer commodities are packaged or labeled.

CHARACTERIZATION OF PACKAGE SIZE

§§ 502.4-502.99 [Reserved]

RETAIL SALE PRICE REPRESENTATIONS

§ 502.100 "Cents-off" representations.

(a) The term "cents-off representation" means any printed matter consisting of the words "cents-off" or words of similar import, placed upon any packaging containing a consumer commodity or placed upon any label affixed to such commodity, stating or representing by implication that the commodity is being offered for sale at a price lower than the ordinary and customary retail sale price.

(b) Except as set forth in § 502.101 of this part, the package or label of a consumer commodity shall not have imprinted thereon by a packager or labeler a "cents-off" representation unless:

(1) The commodity has been sold by the packager or labeler at an ordinary and customary price in the most recent and regular course of business in the trade area in which the "cents-off" promotion is made, either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler.

(2) The packager or labeler sells the commodity so labeled (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler) at a reduction from his ordinary and customary price, which reduction is at least equal to the amount of the "cents-off" representation imprinted on the commodity package or label.

(3) Each "cents-off" representation imprinted on the package or label is limited to a phrase which reflects that the price marked by the retailer represents the savings in the amount of the "cents-off" the retailer's regular price,

e.g., "Price Marked is——¢ Off the Regular Price". "Price Marked is——Cents-off the Regular Price of This Package"; provided, the package or label may in addition bear in the usual pricing spot a form reflecting a space for the regular price, the represented "cents-off" and a space for the price to be paid by the consumer.

(4) The packager or labeler who sells the commodity at retail displays the regular price, designated as the "regular price", clearly and conspicuously on the package or label of the commodity or on a sign, placard, or shelf-marker placed in a position contiguous to the retail display of the "cents-off" marked commodity, and the packager or labeler who does not sell at retail provides the retailer with a sign, placard, shelf-marker, or other device for the purpose of clearly and conspicuously displaying the retailers regular price, designated as "regular price", in a position contiguous to the "cents-off" marked commodity.

(5) The packager or labeler:

(i) Does not initiate more than three "cents-off" promotions of any single size commodity in the same trade area within a 12-month period;

(ii) Allows at least 30 days to lapse between "cents-off" promotions of any particular size packaged or labeled commodity in a specific trade area; and

(iii) Does not sell any single size commodity so labeled in a trade area for a duration in excess of 6 months within any 12-month period.

(6) Sales by the packager or labeler of any single size commodity so labeled in a trade area do not exceed in volume fifty percent (50%) of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period used by the packager or labeler may be the calendar, fiscal, or market year provided the identical period is applied in this paragraph (b)(6) and paragraph (b)(5) of this section. Volume limits may be calculated on the basis of projections for the current year but shall not exceed 50 percent of the sales for the preceding year in the event actual sales are less than the projection for the current year.

(c) A packager or labeler will not make a "cents-off" promotion available in any circumstances where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the "cents-off" marked product. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler in situations where he does not sell to the public.

(d) A packager or labeler who sponsors a "cents-off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection by duly authorized representatives of this Commission and shall be retained for a period of 1 year subsequent to the end of the year (calendar, fiscal, or market) in which the "cents-off" promotion occurs.

[36 FR 23057, Dec. 3, 1971]

§ 502.101 Introductory offers.

(a) The term "introductory offer" means any printed matter consisting of the words "introductory offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than the anticipated ordinary and customary retail sale price.

(b) The package or label of a consumer commodity may not have imprinted thereon by a packager or labeler an introductory offer unless:

(1) The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time.

(2) The packager or labeler clearly and conspicuously qualifies each offer on a package or label with the phrase "Introductory Offer."

(3) The packager or labeler does not sell any commodity so labeled in a

trade area for a duration in excess of 6 months.

(4) At the time of making the introductory offer promotion, the packagers or labeler intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the introductory offer promotion.

(c) The package or label of a consumer commodity shall not have imprinted thereon by a packager or labeler an introductory offer in the form of a "cents-off" representation unless, in addition to the requirements in paragraph (b) of this section:

(1) The packager or labeler clearly and conspicuously and in immediate conjunction with the phrase "Introductory Offer" imprints the phrase "——cents-off the after introductory offer price".

(2) The packager or labeler sells the commodity so labeled (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler) at a reduction from his anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after introductory offer price representation on the commodity package or label.

(d) A packager or labeler will not make an introductory offer with a "cents-off" representation available in any circumstance where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to consumers the represented price reduction. Nothing in this rule, however, should be construed to authorize or condone the illegal setting or policing of retail prices by a packager or labeler.

(e) A packager or labeler who sponsors an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection by duly authorized representatives of this Commission and

shall be retained for a period of 1 year subsequent to the period of the introductory offer.

§ 502.102 "Economy size."

(a) The term "economy size" means any printed matter consisting of the words "economy size," "economy pack," "budget pack," "bargain size," "value size," or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.

(b) The package or label of a consumer commodity may not have imprinted thereon an "economy size" representation unless:

(1) The packager or labeler at the same time offers the same brand of that commodity in at least one other packaged size or labeled form.

(2) The packager or labeler offers only one packaged or labeled form of that brand of commodity labeled with an "economy size" representation.

(3) The packager or labeler sells the commodity labeled with an "economy size" representation (either to the trade in the event such commodity is not sold at retail by the packager or labeler, or to the public in the event such commodity is sold at retail by the packager or labeler), at a price per unit of weight, volume, measure, or count which is substantially reduced (i.e., at least 5 percent) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.

(c) A packager or labeler will not make an "economy size" package available in any circumstances where he knows that it will be used as an instrumentality for deception, e.g., where the retailer charges a price which does not pass on to the consumer the substantial reduction in cost per unit initially granted by the packager or labeler. Nothing in this rule, however, should be construed to authorize or condone the illegal set-

ting or policing of retail prices by a packager or labeler.

(d) A packager or labeler who sponsors an "economy size" package shall prepare and maintain invoices or other records showing compliance with paragraph (b) of this section. The invoices or other records required by this section shall be open to inspection by duly authorized representatives of this Commission and shall be retained for one year.

COMMON NAME AND INGREDIENT LISTING

§§ 502.200—502.299 [Reserved]

NONFUNCTIONAL-SLACK-FILL

§§ 502.300—502.399 [Reserved]

PART 503—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Sec.

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AUTHORITY: Secs. 4, 6, 10, 80 Stat. 1297, 1999, 1300, 1301; 15 U.S.C. 1453, 1455, 1456.

§ 503.1 Interpretations.

The regulations in Parts 500, 501, and 502 of this chapter are necessarily general in application and requests for formal rulings, statements of policy or interpretations shall be addressed to the Secretary of the Commission for consideration. Statements of policy or interpretations binding on the Commission will be published in the **FEDERAL REGISTER**. However, technical questions not involving policy consideration may be answered by the staff.

[36 FR 23058, Dec. 3, 1971]

§ 503.2 Status of specific items under the Fair Packaging and Labeling Act.

Recent questions submitted to the Commission concerning whether certain articles, products or commodities are included under the definition of the term "consumer commodity", as contained in section 10(a) of the Fair Packaging and Labeling Act, have been considered in the light of the Commission's interpretation of that term as set forth in § 503.5 of this part as follows:

(a) The Commission is of the opinion that the following commodities or classes of commodities are not "consumer commodities" within the meaning of the Act.

Antifreeze.
Artificial flowers and parts.
Automotive accessories.
Automotive chemical products.
Automotive replacement parts.
Bicycle tires and tubes.
Books.
Brushes (bristle, nylon, etc.).
Brooms and mops.
Cameras.
Chinaware.
Christmas light sets.
Cigarette lighters.
Clothespins (wooden, plastic).
Compacts and mirrors.
Diaries and calendars.
Flower seeds.
Footwear.
Garden tools.
Gift ties and tapes.
Glasses and glassware.
Gloves (work type).
Greeting cards.
Hand tools.
Handicraft and sewing thread.
Hardware.
Household cooking utensils.
Inks.
Jewelry.
Luggage.
Magnetic recording tape.
Metal pails.
Motor oil (automobile).
Mouse and rat traps.
Musical instruments.
Paintings and wall plaques.
Photo albums.
Pictures.
Plastic table cloths, plastic placement and plastic shelf paper.
Rubber gloves (household).
Safety flares.
Safety pins.
School supplies.
Sewing accessories.

Silverware, stainless steelware and pewterware.

Small arms ammunition.
Smoking pipes.
Souvenirs.
Sporting goods.
Toys.
Typewriter ribbons.
Woodenware.

(b) The Commission is of the opinion that the following commodities or classes of commodities are "consumer commodities" within the meaning of the Act:

Adhesives and sealants.
Aluminum foil cooking utensils.
Aluminum wrap.
Camera supplies.
Candles.
Christmas decorations.
Cordage.
Disposable diapers.
Dry cell batteries.
Light bulbs.
Liquified petroleum gas for other than heating and cooking.
Lubricants for home use.
Photographic chemicals.
Pressure sensitive tapes, excluding gift tapes.
Solder.
Solvents and cleaning fluids for home use.
Sponges and chamolis.
Waxes for home use.

[35 FR 6185, Apr. 16, 1970]

§ 503.3 Name and place of business of manufacturer, packer, or distributor.

To clarify the identity of a manufacturer, packer, or distributor for the purpose of § 500.5 of this chapter, the following represents the opinions of the Commission.

(a) A manufacturer of a bulk product who supplies the product to a contract packager and permits his bulk product to be packaged by the contract packager remains the manufacturer of the commodity, if the contract packager does not perform any act other than package filling and labeling.

(b)(1) A manufacturer of a bulk product who supplies the bulk to a contract packager but permits the packager to modify the bulk commodity by the addition of any substance which changes the identity of the bulk, ceases to be the manufacturer of the consumer commodity. At that

point, if the manufacturer of the bulk elects to use his name on the label of the consumer commodity, his name should be qualified to show "Distributed by _____", or "Manufactured for _____".

(2) The identity of a bulk substance received by a contract packager is changed if the packager, for example, adds a propellant as in the case of an aerosol, or adds a solvent as in the case of a paint, or blends two or more components, or changes the physical state as in the case of a liquid being changed to a gel or a semisolid being changed to a solid.

(c) A person or firm who supplies a formula and/or specifications to a contract packager but who takes no part in the actual production of the consumer commodity is not the manufacturer of the consumer commodity for the purpose of § 500.5(a) of this chapter. This is true whether the person or firm who supplies the formula or specifications, or both, also supplies the raw materials which are to be reacted, mixed, or otherwise modified to produce the consumer commodity.

(d) A corporation which wholly owns a manufacturing subsidiary which retains its separate corporate identity, is not the manufacturer of the consumer commodities manufactured by the wholly owned subsidiary, but must qualify its name if it elects to use its name on the label. Such qualification may be "Manufactured for _____", "Distributed by _____", or "Manufactured by _____ (XYZ, Inc., City, State, Zip Code, a subsidiary of ABC, Inc.)".

[34 FR 4856, Mar. 7, 1969, as amended at 34 FR 11199, July 3, 1969]

§ 503.4 Net quantity of contents, numerical count.

To clarify the requirement for declaration of net quantity in terms of count for the purpose of §§ 500.5 and 500.7 of this chapter, the following interpretation is rendered.

(a) When a consumer commodity is properly measured in terms of count only, or in terms of count and weight, volume, area, or dimension, the regulations are interpreted not to require the declaration of the net content as "one", provided the statement of iden-

tity clearly expresses the fact that only one unit is contained in the package. Thus the unit synthetic sponge, the unit light bulb, and the unit dry cell battery do not require a net quantity statement of "one sponge," "one light bulb," or "one dry cell battery." However, there still exists the necessity to provide a net quantity statement to specify weight, volume, area, or dimensions when such are required. For example, the synthetic sponge which is packaged, requires dimensions such as "5 in. x 3 in. x 1 in." A multicomponent package or a package containing two or more units of the same commodity shall bear the net quantity statement in terms of count, and weight, volume, area, or dimensions as required. This interpretation does not preclude the option to enumerate a unit count on a single packaged commodity if so desired.

[34 FR 18087, Nov. 8, 1969]

§ 503.5 Interpretation of the definition of "consumer commodity" as contained in section 10(a) of the Fair Packaging and Labeling Act.

(a) Section 10(a) of the Fair Packaging and Labeling Act defines the term "consumer commodity" in four classifications. These are:

(1) Any food, drug, device, or cosmetic;

(2) And any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities.

(i) For consumption by individuals and which usually is consumed or expended in the course of such consumption.

(ii) For use by individuals for purposes of personal care and which usually is consumed or expended in the course of such use.

(iii) For use by individuals in the performance of services ordinarily rendered within the household and which usually is consumed or expended in the course of such use.

(b) Section 10(a) then expressly excludes (1) meats, poultry, and tobacco, (2) economic poisons and biologics for animals, (3) prescription drugs, (4) al-

coholic beverages, and (5) agricultural and vegetable seeds.

(c) Pursuant to sections 5 and 7 of the Fair Packaging and Labeling Act, the authority to promulgate regulations and to enforce the Act as to any food, drug, device, or cosmetic has been delegated to the Secretary of Health, Education, and Welfare and as to any other "consumer commodity" to the Federal Trade Commission.

(d) As to these articles, products, or commodities subject to regulation by the Federal Trade Commission, the legislative history of the Act demonstrates the intent of Congress, for the reasons stated therein, to place the following categories outside the scope of the definition of "consumer commodity":

- (1) Durable articles or commodities;
- (2) Textiles or items of apparel;
- (3) Any household appliance, equipment, or furnishing, including feather and down-filled products, synthetic-filled bed pillows, mattress pads and patchwork quilts, comforters and decorative curtains;
- (4) Bottled gas for heating or cooking purposes;
- (5) Paints and kindred products;
- (6) Flowers, fertilizer, and fertilizer materials, plants or shrubs, garden and lawn supplies;
- (7) Pet care supplies;
- (8) Stationery and writing supplies, gift wraps, fountain pens, mechanical pencils, and kindred products.

(e) The articles, products, or commodities that are within the terms of section 10(a) of the Act and subject to regulation by the Federal Trade Commission are either expendable commodities for consumption by individuals, expendable commodities used for personal care, or expendable commodities used for household services. The primary terms in section 10(a) for defining these categories are:

- (1) Consumption by individuals;
 - (2) Use by individuals;
 - (3) Personal care by individuals;
 - (4) Performances of services ordinarily rendered within the household by individuals;
 - (5) Consumed or expended.
- (f) These terms are defined as follows:

(1) *Consumption by individuals.* This term as it is used in section 10(a) means the using up of an article, product, or commodity by an individual.

(2) *Use by individuals.* This term as it is used in section 10(a) means the employment or application of an article, product, or commodity by an individual.

(3) *Personal care by individuals.* This term as it is used in section 10(a) means that activity of an individual which is concerned with protecting, enhancing, and providing for the general cleanliness, health, or appearance of the individual.

(4) *Performance of services ordinarily rendered within the household by individuals.* These terms as they are used in section 10(a) mean: The term "household" refers to the interior and exterior of dwellings or residences occupied by individuals, including the surrounding premises. The term "performance of services ordinarily rendered within the household" means the doing of any activity by an individual within the above-described area which is normally done in connection with the maintenance and occupation of the above-described area as a habitation for individuals.

(5) *Consumed or expended.* These terms as they are used in section 10(a) mean (i) the immediate destruction or extinction of an article, product, or commodity, or of the part used; or (ii) the substantial diminution in the quantity, quality or utility of an article, product, or commodity which results from usage upon one or several occasions over a comparatively short period of time.

(g) The foregoing definition serves to amplify the definition of "consumer commodity" supplied by Congress in section 10(a) of the Act. As questions arise as to whether specific articles, products, or commodities are included in the above definition, the Commission will consider, among other things, the Congressional policy declared in section 2 of the Act, namely, that packages and labels should enable consumers to obtain accurate information as to the quantity of contents and should facilitate value comparisons. That is, in making its determinations of inclusions and exclusions under this

definition, the Commission will consider the requirements of both the Act and the pertinent regulations and in that connection will regard as one criterion the extent to which the disclosures required on "consumer commodities" are material to a consumer's selection of a particular article, product, or commodity. Interpretative rulings in such instances will be made public, and can be expected to further contribute to the development of clearer delineation of the scope of the term "consumer commodity".

(h) With respect to articles, products, or commodities included within the definition of "consumer commodities", the Commission will consider requests for exemptions in accordance with section 5(b) of the Act and § 500.3(e) of this chapter, and will make public its rulings on all such requests.

[34 FR 12945, Aug. 9, 1969]

§ 503.6 Packagers' duty to withhold availability of packages imprinted with retail sale price representations.

To clarify the requirements, under Part 502 of this chapter, that a packager or labeler will not make packages marked with retail sale price representations available in any circumstance where he knows or should have reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, the

following represents the opinions of the Commission:

(a) Details of a plan to provide special packaging or special package sizes bearing retail sale price representations should contain the condition that customers will not be provided with such packages unless they resell the package at a price which fully passes on to the purchasers the represented savings or sale price advantage.

(b) A packager or labeler who, in good faith, takes reasonable and prudent measures to verify the performance of his customers will be deemed to have satisfied his obligation under the regulations. If the packager has taken such steps, the fact that a particular customer has failed to resell the packages at a price which fully passes on to the purchaser the represented savings or sale price advantage shall not alone place a seller in violation of the regulations.

(c) Any packager or labeler who determines that a customer does not intend to fulfill or has not fulfilled the conditions of an offer should immediately refrain from further sale under that offer to the customer. In situations where proper fulfillment of the conditions of an offer are in question, the Commission will resolve the issue after appropriate investigation of the facts submitted.

[36 FR 23058, Dec. 3, 1971]

SUBCHAPTER F—STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS UNDER THE FAIR CREDIT REPORTING ACT

PART 600—STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS

Sec.

- 600.1 Credit guides.
- 600.2 Protective Bulletins.
- 600.3 Loan exchanges.
- 600.4 Motor vehicle reports.
- 600.5 Prescreening.
- 600.6 Office of Personnel Management.
- 600.7 Reasonable procedures to assure maximum possible accuracy of information concerning individuals—Undesignated information in credit transactions. (Interprets 15 U.S.C. 1681e (1970).)
- 600.8 Permissible purposes for reports on nonapplicant spouse in consumer credit transactions (Interprets 15 U.S.C. 1681b (1970)).

AUTHORITY: Sec. 621, Fair Credit Reporting Act (15 U.S.C. 1681s) and § 1.73 of the Commission's procedures and rules of practice (36 FR 9293) 16 CFR 171-73.

SOURCE: 38 FR 4945, Feb. 23, 1973, unless otherwise noted.

§ 600.1 Credit guides.

(a) Credit guides are generally published by credit bureaus and leased on an annual basis to credit grantors. These "guides" are alphabetical listings of certain information, usually in code, rating each consumer as to how he pays his bills. For example, a business dealing with a consumer rates the individual on a scale from 0 to 9 depending on the type of account, 9 being the most favorable rating a person may receive. This information is assembled into a book called a "credit guide" which is distributed, for a fee, to all bureau members wishing to make use of the information.

(b) Section 603(d) of the FCRA defines a "consumer report" as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, . . . which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family or house-

hold purposes, or (2) employment purposes, or (3) other purposes authorized under section 604." Section 604 of the Act prohibits the furnishing of consumer reports except for the specified permissible purposes indicated therein.

(c) "Credit guides," as presently compiled and distributed by credit bureaus, are a series of consumer reports, since they contain information which is used for the purpose of serving as a factor in establishing the consumer's eligibility for credit. It is apparent that at the time these series of consumer reports are distributed, no permissible purpose for obtaining these reports exists, in accordance with the provisions of section 604. That is, though a recipient of the credit guide may have a permissible purpose for obtaining credit information on one or more of the consumers whose names are contained in the "guide," no recipient could conceivably ever have a transaction with every individual whose name is contained therein. Additionally, the permissible purpose for furnishing the consumer report must exist at the time the request for the report is made; it is not enough to obtain the consumer report in anticipation that a permissible purpose will arise subsequently.

(d) For the above reasons, it is the Commission's view that the publication and distribution of these credit guides is violative of the Fair Credit Reporting Act. To allow the continued compilation and distribution of these guides would provide a major means of circumventing the provisions of section 604 of the Fair Credit Reporting Act and would ignore one of the stated purposes of the Act, i.e., "respect for the consumer's right to privacy." Businesses that have need of information on a consumer, and have a right to that information because, for example, the consumer is applying for credit, are expected to contact the consumer reporting agency as the need arises.

(e) Although this interpretation clearly proscribes credit guides in their present form, it does not preclude the furnishing of information by a consumer reporting agency which is coded so that the consumer's identity is not disclosed, and therefore the information does not constitute a "consumer report" until decoded. Information which is coded to insure consumer anonymity and which incorporates procedures to insure the efficient correction of inaccurate, misleading, or obsolete information would fall within the scope of this interpretation. For example, unique identifiers such as social security number, drivers license number, or bank account number will provide adequate coding.

NOTE: The Commission will suspend enforcement of this interpretation until August 23, 1973, in order to provide publishers of credit guides the opportunity to recall existing guides to incorporate modifications insuring consumer anonymity and efficient correction of inaccurate, misleading, or obsolete information. All credit guides that are in noncompliance must be recalled by August 23, 1973.

§ 600.2 Protective Bulletins.

(a) A number of trade associations and other organizations issue Protective Bulletins, which are lists of consumers who have issued worthless checks or who for some other reason may not be credit worthy, or lists of persons whose alleged personal characteristics or affiliations disqualify them for employment. The question arises whether under the FCRA are such lists considered "consumer reports" and if so, may they be distributed?

(b) Communications issued by "persons" (broadly defined in FCRA section 603(b) which are used to determine a consumer's credit worthiness are limited by sections 603 and 604 of the Fair Credit Reporting Act and such information can only be distributed to credit grantors and others who have a specific legitimate business need for information about that individual in connection with his application for credit, insurance, employment or other similar business transactions. Therefore, the distribution of certain kinds of lists and "bulletins" appears to be restricted. However, this will not

apply to certain kinds of communications issued by organizations which are limited to a series of descriptions, usually accompanied by photographs, of individuals who are being sought by law enforcement authorities for alleged violation of criminal laws. These descriptions are usually accompanied by a statement such as "Information as to further activities, location or arrest of any of the following persons should be communicated to police authorities named in the warnings."

(c) In the Commission's view, such bulletins are not a "consumer report" or a series of them because the information was neither collected for consumer reporting purposes nor can it reasonably be anticipated that it will be used in connection with a legitimate business transaction with the persons reported upon. The primary purpose of the bulletins is to warn potential victims of the habits, practices, and descriptions of alleged check forgers, swindlers, and other criminals for whom arrest warrants are outstanding. While, of course, it is possible that an individual warned against in these bulletins could request a consumer loan, insurance, or employment, this is clearly a sufficiently remote possibility so as not to justify elimination of such a publication on FCRA grounds. There appears to be no basis for concluding that the protections, rights, and privileges afforded to consumers under the Fair Credit Reporting Act can be extended to proscribe this kind of warning communication, so long as it remains devoid of information collected or reasonably expected to be used for the purpose of serving as a factor in establishing the subjects' eligibility for consumer credit, insurance, employment, or other purposes mentioned in section 604 of the Act.

§ 600.3 Loan exchanges.

(a) As a rule, loan exchanges are owned and operated on a cooperative basis by local consumer finance companies, and their membership usually includes the nationwide companies operating in the particular area serviced by the exchange. All members of the local exchange are required to furnish to the exchange the full identity and

loan amount of each of their borrowers. When a prospective borrower applies for a loan, the loan exchange is contacted for a determination of how many and what kinds of loans he has currently outstanding.

(b) Loan exchanges exist to fulfill one primary function: Collecting and reporting information to prospective credit grantors that has a direct "bearing on a consumer's credit worthiness, credit standing, credit capacity," etc. (definition of "consumer report," section 603(d)).

(c) Section 603(f) of the FCRA defines "consumer reporting agency" to include any person which " * * * on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports." Accordingly, any exchange or pool which collects information which might bear on a decision to grant credit or insurance for personal, family, or household use, or employment, and disseminates this information to its members or other third parties is a consumer reporting agency. Prospective lenders that use this information are required to make the section 615(a) disclosure to consumers when they deny credit on the basis of the information. However, if credit is denied or the cost increased on the basis of information obtained after direct inquiry to another lender (even if that lender's identity was supplied by the loan exchange), then the prospective credit grantor will give the section 615(b) disclosure rather than identify the loan exchange pursuant to section 615(a).

§ 600.4 Motor vehicle reports.

(a) It is quite common for certain businesses such as insurance companies to request reports on a prospective (or current) insured from various State departments of motor vehicles. These reports are sold to such companies and generally reveal a consumer's entire driving record, including arrests

for speeding, drunk driving, involuntary manslaughter, etc.

(b) It is the Commission's view that, under the circumstances in which such a State motor vehicle report contains information which bears on the "personal characteristics" of the consumer; that is, when the report refers to an arrest for drunk driving, such reports sold by a department of motor vehicles are "consumer reports" and the agency is a "consumer reporting agency" when it sells such reports.

(c) Since section 615(b), requiring the user's disclosure of information received from a third person who is not a consumer reporting agency, only applies to a denial of credit, the consumer is denied this important information when insurance is denied or the cost increased, unless the insurance company identifies the department pursuant to section 615 (a), which requires a user to disclose the identity of any consumer reporting agency that has furnished such information.

(d) We believe that there is no basis for granting State motor vehicle departments an exemption from the definition of "consumer reporting agency" (section 603(f)). The reports clearly contain information "bearing on a consumer's * * * character, general reputation, personal characteristics, or mode of living," and when they are used "as a factor in establishing the consumer's eligibility for * * * insurance" (section 603(d)), the FCRA should apply.

(e) It should be noted that this interpretation is not intended to interfere with the legitimate law enforcement activities of State motor vehicle departments. In the Commission's view, the Act imposes the following requirements when State motor vehicle departments furnish motor vehicle reports to insurance companies:

(1) That the users (insurance companies) of motor vehicle reports identify (pursuant to section 615(a)) the motor vehicle department as the source of the report when it is used as a factor in denying, canceling, or increasing the cost of insurance;

(2) That motor vehicle departments disclose the "nature and substance" of the consumer's motor vehicle record

when requested to do so pursuant to sections 609 and 610;

(3) That motor vehicle departments comply with the reinvestigation requirements of section 611;

(4) That motor vehicle departments comply with the absobescence requirements of section 605; and

(5) That motor vehicle departments maintain reasonable procedures pursuant to section 607(b) to assure the maximum possible accuracy of their motor vehicle reports.

(f) This interpretation does not preclude a motor vehicle department from providing information to other State authorities or to Federal authorities that are involved in licensing or law enforcement activities.

§ 600.5 Prescreening.

(a) The practice of prescreening is common in the consumer reporting industry. One typical situation arises when a consumer reporting agency performs a list editing service for customers that market their products by direct mail solicitations. The seller sometimes sends his list to a consumer reporting agency, where the list is edited by deletion of those names that have an adverse credit record in the files.

(b) In this instance, the editing process is only used for the purpose of determining to whom the initial mailing is sent. Those individuals edited from the original list may apply for credit at a later date, in which case a new credit determination is made without reference to the mailing list either edited or unedited. In other situations, the consumer reporting agency is asked to create its own list of credit worthy individuals, based upon the soliciting business' criteria.

(c) The contention is put forth that the company does not deny credit to anyone whose name was deleted from the initial list and therefore it is not required to give notice to the consumer pursuant to section 615(a). It is also asserted that the prescreening service constitutes a permissible purpose to receive consumer reports under section 604(3)(A). That is, each individual whose name remains on the list then receives a solicitation involving an offer of extension of credit

from the company. Finally, the list is used solely for the purpose stated above and is not used at any future date as a basis for denying credit.

(d) The user of a consumer report must be considering a business transaction involving each consumer upon whom a consumer report is furnished. Unlike credit guides, users of prescreened lists have a present intention to have a business transaction with every person on the prescreened list. Moreover, the furnishing of prescreened lists of consumers will only be permissible when the user can certify that every person listed will be the subject of an offer to enter into the particular business relationship involved.

(e) The Commission recognizes that the legislative history of the FCRA reveals a concern for the consumer's privacy and the accuracy of information stored at credit bureaus, and demonstrates a sensitivity as to the balance between the free flow of credit information for legitimate business purposes and the right of the consumer to keep his affairs private. However, the practice of prescreening results in no significant harm to consumers and the practice is not inconsistent with the basic purposes of the Act. Further, the ability of the consumer reporting agency to perform these prescreening services for a credit grantor shall not be deemed to permit delegation to a consumer reporting agency by a business of its credit granting, employment, insurance, or other business decisions whereby the consumer applying for such would be denied the right to the section 615 disclosures or any other rights under the Act.

§ 600.6 Office of Personnel Management.

(a) In the course of its operations the Office of Personnel Management collects and files data concerning current and potential employees of the Federal Government. This data may include commentary on such matters as the subject's character, general reputation, personal characteristics, or mode of living, and the information is routinely transmitted to various branches of the government. The question has arisen whether these ac-

tivities are subject to the provisions of the Fair Credit Reporting Act.

(b) The definition of a "consumer report" section 603(d)(2) includes any written, oral, or other communication containing information of the type reported by the Office of Personnel Management when that communication is used for employment purposes. That provision is applicable, however, only to those reports issued by a "consumer reporting agency," which is described in section 603(f) as being a "person" which assembles such information "for monetary fees, dues, or on a cooperative nonprofit basis" to third parties. Although such a person may be a "government or governmental subdivision or agency" (section 603(b)), it is the Commission's view that the Office of Personnel Management was not intended by Congress to be subject to the Fair Credit Reporting Act.

(c) While in another context exchanges of information between the Office of Personnel Management and other government agencies might be described as "nonprofit" and "cooperative," the legislative history of section 603(d) indicates that the language was intended to refer to commercial enterprises engaged in mutually beneficial exchanges of information. See 116 Congressional Record 36576 (remarks of Representative Brown)(1970). The proposition that Federal agencies were meant to be included as well finds no support in the Congressional debates or committee reports.

(d) In addition, there is no reference to administrative agencies of the U.S. Government in the discussions of the definition of the term "consumer reporting agency" which preceded passage of the Fair Credit Reporting Act, 116 Congressional Record 35941 (remarks of Senator Proxmire)(1970); 116 Congressional Record 36575 (remarks of Representatives Wylie, Sullivan, Brown, and Widnall)(1970). Normally Congress requests the views of officials of affected agencies when hearings are held on proposed legislation. It is unlikely that legislation affecting the Office of Personnel Management would have been considered and passed without the benefit of comments from that agency.

(e) For these reasons, the reporting activities of Federal agencies such as the Office of Personnel Management will not be included within the scope of the Commission's Fair Credit Reporting Act enforcement program.

[44 FR 70457, Dec. 7, 1979]

§ 600.7 Reasonable procedures to assure maximum possible accuracy of information concerning individuals—Undesignated information in credit transactions. (Interprets 15 U.S.C. 1681e (1970).)

(a) *Need for Interpretation:* (1) For many years most credit history of joint accounts or user accounts was reported to credit bureaus only in the name of the husband. The information was stored in a file under the identifier: "John Doe, spouse: Mary." The file could be accessed only by the husband's name ("John Doe") while the wife's name ("Mary") served as an identifier to distinguish John Doe from others of the same name in the same manner as his street address, birthdate and social security number. In some instances the files were termed "joint files," but the practical effect of the storage systems appears to have been the merger of all credit history from the marriage into the husband's file.

(2) Section 202.10 of Regulation B, which implements the Equal Credit Opportunity Act, addresses itself to this problem by requiring creditors on or after June 1, 1977, to report account information to credit bureaus in a manner which will reflect the participation of both spouses in the accounts and which will enable the agencies to provide access to the information in the name of each spouse.¹ In addition, the regulation requires that creditors ascertain whether accounts established prior to and in existence on June 1, 1977, are joint or separate accounts and adjust their reporting of these accounts accordingly.² This determination can be made either from the creditor's records or by mailing of the notice provided by the regulation. For accounts opened after June 1,

¹ 12 CFR 202.10(a) (1977).

² 12 CFR 202.10(b) (1977).

1977, creditors are required to determine how the credit history is to be reported when the accounts are opened.³ Finally, § 202.6(b)(6)(iii) requires creditors, to the extent to which they consider credit history, to consider the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's ability or willingness to repay.⁴

(3) Regulation B does not resolve the problem of how credit history not designated by the § 202.10 procedure is to be treated. In most automated credit reporting systems this information is currently reported in the name of only one spouse, usually the husband, and retrievable only in his name even if the information reflects the history of a joint account or an account on which the wife was a user. The resulting lack of affirmative credit history can render the wife uncreditworthy as effectively as derogatory information. Ultimately, the "undesignated information"⁵ problem will be resolved prospectively by the operation of § 202.10, which will establish separate credit histories for married women. For the next few years, however, unavailability of undesignated information could restrict the ability of women to obtain credit.

(4) There appear to be two possible solutions to the problem presented by the current reservoir of undesignated information. The first solution is to allow a credit bureau to automatically incorporate undesignated information

from the file of the applicant's spouse in its report on the applicant and rely on the Fair Credit Reporting Act's correction mechanism to remove information which does not reflect the applicant's credit history.

(5) The second solution is to prohibit the reporting of undesignated information from the file of the applicant's spouse unless the consumer reporting agency has some indication that the information in fact relates to the applicant other than the mere "undesignated" status of the particular information in the spouse's file. Such an approach would include setting up separate credit histories on request of the consumer, using undesignated information previously reported in the spouse's name and allowing creditors to verify by telephone that particular accounts listed on an application are reported as undesignated information in the spouse's file.

(b) *Interpretation.* (1) The term undesignated information refers to all credit history information in a married consumer's file which was not reported to the consumer reporting agency with a designation indicating that the information relates to either the consumer's joint or individual credit experience. This would include most file information compiled up to June 1, 1977 (when the Regulation B designation requirement goes into effect), and most information reported to pre-June 1977 accounts which have not been designated either by the creditor, through the process set forth in § 202.10(b) of Regulation B, or by the consumer's direct request to the credit bureau. The question arises as to what procedures an automated consumer reporting agency should follow to make undesignated information available to either spouse when it was previously reported in the name of only one spouse.

(2) Under the Fair Credit Reporting Act a consumer reporting agency may report information contained in the file of spouse A when spouse B applies for a separate extension of credit if such information relates to accounts on which spouse B was either a joint user or contractually liable. Conversely, however, a consumer reporting agency may not report information

³ 12 CFR 202.10(a) (1977).

⁴ 12 CFR 202.6(b)(6)(iii) (1977).

⁵ The term "undesignated information" refers to all credit history information in a married consumer's file which was not reported to the consumer reporting agency with a designation indicating that the information relates to either the consumer's joint or individual credit experience. This would include most file information compiled up to June 1, 1977 (when the Regulation B designation requirement goes into effect) and most information reported to credit bureaus after that date which relates to pre-June 1977 accounts that have not been designated either by the creditor, through the process set forth in § 202.10(b) of Regulation B, or by the consumer's direct request to the credit bureau.

from spouse A's file which relates only to his or her individual credit history when spouse B applies for credit, unless the creditor otherwise has a permissible purpose for the report under sec. 604(3)(A)¹ of the Fair Credit Reporting Act.

(3) While this principle is simple to state, it is difficult to apply since most credit grantors have in the past reported the credit history of accounts on which two spouses are jointly liable or on which one is liable and the other a user, only in the name of one spouse and in most instances in the name of the husband. Although § 202.10 of Regulation B, which interprets the Equal Credit Opportunity Act, 12 CFR Part 202,² is designed to provide a prospective solution to this problem, it appears to be commercially impracticable for consumer reporting agencies to reinvestigate all existing information to determine whether it reflects the participation of both spouses. Consumer reporting agencies are thus faced with a choice of either reporting all undesignated information in the husband's file on the assumption that most of it relates to both spouses or initiating procedures to reinvestigate undesignated information upon the request of the consumer and establish a separately accessible record in those instances in which the consumer's participation can be verified.

(4) The Commission believes a credit bureau which responds to a request for information on a consumer by supplying all undesignated information from the file of the consumer's spouse would not be in compliance with Section 607(b)³ of the Fair Credit Reporting Act, which requires the credit bureau to follow reasonable procedures to ensure the maximum possible accuracy of the information it reports, since some or all of the information reported may not relate to both spouses.

(5) An acceptable alternative method of ensuring access by both spouses to undesignated information would be for credit bureaus to allow

married or divorced individuals who wish undesignated information to be segregated to contact the credit bureau in order to have undesignated information which was previously reported only in their spouse's names placed in a separate file which is accessible under their names. This procedure, currently in use by some credit bureaus, should ensure greater accuracy and protection of the privacy of individual spouses than automatic reporting of undesignated information. Such a procedure affords the credit bureau some additional indication, through the individual's own word plus any reinvestigation the credit bureau deems it advisable to conduct, that the undesignated information belongs to the consumer. The presumption that all information in one spouse's file covering the period of the marriage belongs to both spouses, when buttressed by a specific request by the other spouse, is a reasonable procedure to insure the accuracy of the information under section 607(b) of the Fair Credit Reporting Act.

(6) Finally, the Commission believes that credit bureaus, consistently with this interpretation, must adopt some procedure to ensure that undesignated information can be accessed in the name of either spouse who wishes to rely on it. If such a procedure is not adopted and offered without charge to consumers by credit bureaus, creditors who rely on information supplied by those bureaus to grant or deny credit may be subject to challenge under the general prohibition of discrimination against applicants on the basis of sex or marital status which is contained in § 202.4 of Regulation B.⁴ A credit bureau's failure to create a separate credit history on request as described in the preceding paragraph may render its data base discriminatory and unusable by creditors unless the bureau can satisfy the Commission that it has a nondiscriminatory justification for its practice.

[43 FR 9473, Mar. 8, 1978]

¹ 15 U.S.C. 1681b(3)(A) (1970). See also, Proposed Interpretation 600.8, *infra*.

² 12 CFR 202.10 (1977).

³ 15 U.S.C. 1681e(b) (1970).

⁴ 12 CFR 202.4 (1977).

§ 600.8 Permissible purposes for reports on nonapplicant spouse in consumer credit transactions (Interprets 15 U.S.C. 1681b (1970)).

(a) Because of the many types of accounts offered by creditors which involve reliance by the creditor on the resources of both spouses, a question arises as to when a creditor has a permissible purpose to access the consumer report of the nonapplicant spouse.¹

(b) Whether a creditor would have a permissible purpose to access the consumer report of the nonapplicant spouse turns on the extent of the spouse's involvement in the credit transaction. In order to make such a determination it is appropriate to look to § 202.5(c)(2) of Regulation B which implements the Equal Credit Opportunity Act.² That section provides the circumstances under which a creditor may request information about the applicant's spouse. The Commission interprets section 604(3)(A)³ of the Fair Credit Reporting Act (FCRA) to permit a creditor to access the consumer report of the applicant's spouse in those cases in which § 202.5(c)(2) (i), (ii), (iii) and (iv)⁴ permit the creditor to request information about the spouse subject to the limitation discussed below.⁵

(c) In our view, a creditor may access the consumer report of the applicant's spouse when the applicant is applying for an account which the spouse will be permitted to use,⁶ or an account for which the spouse will be contractually liable.⁷ In these instances a creditor

would have a permissible purpose to access the nonapplicant spouse's report because, as to those two types of accounts, the creditor "intends to use the information in connection with a credit transaction involving the extension of credit to the consumer".⁸ Since the nonapplicant spouse in both situations is receiving, in effect, an extension of credit, the creditor has a permissible purpose to receive the consumer report of both the applicant and nonapplicant spouse.

(d) Where the applicant is relying on community property as a basis for repayment of the obligation,⁹ the creditor would also have a permissible purpose under section 604(3)(A)¹⁰ of the FCRA to obtain the consumer report of the nonapplicant spouse. This interpretation is based on the assumption that the applicant is acting as an agent for his or her spouse in committing either the community property or the spouse's income as a basis for establishing creditworthiness. Revised Regulation B allows the creditor to request information whenever the applicant resides in a community property state or property on which the applicant is relying as a basis of repayment of the credit requested is located in a community property state. The Commission believes that a creditor can rely on these two criteria (residence of the consumer and location of property) to determine reliance on community property. However, if the creditor receives information clearly indicating that the applicant is relying only on separate property to repay the credit extended, then a permissible purpose would not exist and a consumer credit report on the nonapplicant spouse could not be obtained.

(e) Similarly, where the applicant is relying on the nonapplicant spouse's income in a separate property state,¹¹ and State law provides for liability on the part of the nonapplicant spouse, either under the doctrine of necessities or based on the agency relationship created by the marriage, a permissible

¹The term "nonapplicant spouse" is used here for identification purposes and refers to a spouse not actually signing or otherwise completing the application.

²Pub. L. 93-475, 88 Stat. 1521 (1974), as amended Pub. L. 94-239 (1976), 12 CFR 202.5(c)(2) (1977).

³15 U.S.C. 1681b(2) (A) (1970).

⁴12 CFR 202.5(c)(2) (i), (ii), (iii), and (iv) (1977).

⁵This interpretation is not intended to limit or abrogate any State law regarding privacy, privilege, or similar restrictions on obtainable information.

⁶12 CFR 202.5(c)(2)(i) (1977).

⁷12 CFR 202.5(c)(2)(ii) (1977).

⁸See Section 604(3)(A), 15 U.S.C. 1681b(3)(A) (1970).

⁹12 CFR 202.5(c)(2)(iv) (1977).

¹⁰15 U.S.C. 1681b(3)(A) (1970).

¹¹12 CFR 202.5(c)(iii) (1977).

purpose would exist to request a consumer credit report on the nonapplicant spouse. Because the application of the law of agency and the doctrine of necessities is often a factual question under state law, the Commission believes that creditors may assume that a permissible purpose exists from the fact that the applicant is relying on the nonapplicant spouses income.¹² If, however, the creditor has or receives information clearly indicating that the applicant is not acting as the agent of the nonapplicant spouse and that the state doctrine of necessities does not apply to the transaction, a permissible purpose would not exist and a consumer credit report on the nonapplicant spouse could not be obtained.

(f) The rationales described above do not apply to the situation set forth in § 202.5(c)(2)(v) ¹³ of Regulation B. The Commission believes that the fact of a previous marriage, standing alone, is not sufficient to establish a permissi-

ble purpose to obtain a consumer report on a spouse or former spouse under section 604. Although § 202.5(c)(2)(v) ¹⁴ allows the creditor to request information on a former spouse where the applicant is relying on alimony or child support, a former spouse cannot be deemed to have consented to the distribution of his or her consumer report as can a participant in an ongoing marriage. Where a spouse is legally separated or has otherwise indicated an intent to legally disassociate with the marriage the Commission believes that no permissible purpose to obtain a consumer report exists.¹⁵

(g) Finally, it should be noted that a permissible purpose for making a consumer report on a nonapplicant spouse can never exist under section 604(3)(A) ¹⁶ of the Fair Credit Reporting Act where Regulation B prohibits the creditor from requesting information on the spouse.

[44 FR 3260, Jan. 16, 1979]

¹² While the Commission believes this assumption is a reasonable test for a creditor to employ to determine whether it has a permissible purpose under section 604(3)(A), 15 U.S.C. 1681b(3)(A) (1970), the assumption would have no impact on the nonapplicant spouse's actual liability under state law in the event of default.

¹³ 12 CFR 202.5(c)(2)(v) (1977).

¹⁴ 12 CFR 202.5(c)(2)(v) (1977).

¹⁵ 15 U.S.C. 1681b(3)(A) (1970). Nothing in this interpretation should be read to prohibit the creditor from considering information about the former spouse which is presented by the applicant or obtained from a source other than a consumer reporting agency.

¹⁶ Id.

SUBCHAPTER G—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE MAGNUSON-MOSS WARRANTY ACT

PART 700—INTERPRETATIONS OF MAGNUSON-MOSS WARRANTY ACT

Sec.

- 700.1 Products covered.
- 700.2 Date of manufacture.
- 700.3 Written warranty.
- 700.4 Parties "actually making" a written warranty.
- 700.5 Expressions of general policy.
- 700.6 Designation of warranties.
- 700.7 Use of warranty registration cards.
- 700.8 Warrantor's decision as final.
- 700.9 Duty to install under a full warranty.
- 700.10 Section 102(c).
- 700.11 Written warranty, service contract, and insurance distinguished for purposes of compliance under the Act.
- 700.12 Effective date of 16 CFR Parts 701 and 702.

AUTHORITY: Magnuson-Moss Warranty Act, Pub. L. 93-637, 15 U.S.C. 2301.

SOURCE: 42 FR 36114, July 13, 1977, unless otherwise noted.

§ 700.1 Products covered.

(a) The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes. This definition includes property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed. This means that a product is a "consumer product" if the use of that type of product is not uncommon. The percentage of sales or the use to which a product is put by any individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage.

(b) Agricultural products such as farm machinery, structures and implements used in the business or occupation of farming are not covered by the Act where their personal, family, or

household use is uncommon. However, those agricultural products normally used for personal or household gardening (for example, to produce goods for personal consumption, and not for resale) are consumer products under the Act.

(c) The definition of "Consumer product" limits the applicability of the Act to personal property, "including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed." This provision brings under the Act separate items of equipment attached to real property, such as air conditioners, furnaces, and water heaters.

(d) The coverage of separate items of equipment attached to real property includes, but is not limited to, appliances and other thermal, mechanical, and electrical equipment. (It does not extend to the wiring, plumbing, ducts, and other items which are integral component parts of the structure.) State law would classify many such products as fixtures to, and therefore a part of, realty. The statutory definition is designed to bring such products under the Act regardless of whether they may be considered fixtures under state law.

(e) The coverage of building materials which are not separate items of equipment is based on the nature of the purchase transaction. An analysis of the transaction will determine whether the goods are real or personal property. The numerous products which go into the construction of a consumer dwelling are all consumer products when sold "over the counter," as by hardware and building supply retailers. This is also true where a consumer contracts for the purchase of such materials in connection with the improvement, repair, or modification of a home (for example, paneling, dropped ceilings, siding, roofing, storm windows, remodeling). However, where such products are at the time of sale integrated into the

structure of a dwelling they are not consumer products as they cannot be practically distinguished from realty. Thus, for example, the beams, wall-board, wiring, plumbing, windows, roofing, and other structural components of a dwelling are not consumer products when they are sold as part of real estate covered by a written warranty.

(f) In the case where a consumer contracts with a builder to construct a home, a substantial addition to a home, or other realty (such as a garage or an in-ground swimming pool) the building materials to be used are not consumer products. Although the materials are separately identifiable at the time the contract is made, it is the intention of the parties to contract for the construction of realty which will integrate the component materials. Of course, as noted above, any separate items of equipment to be attached to such realty are consumer products under the Act.

(g) Certain provisions of the Act apply only to products actually costing the consumer more than a specified amount. Section 103 applies to consumer products actually costing the consumer more than \$10, excluding tax. The \$10 minimum will be interpreted to include multiple-packaged items which may individually sell for less than \$10, but which have been packaged in a manner that does not permit breaking the package to purchase an item or items at a price less than \$10. Thus, a written warranty on a dozen items packaged and priced for sale at \$12 must be designated, even though identical items may be offered in smaller quantities at under \$10. This interpretation applies in the same manner to the minimum dollar limits in section 102 and rules promulgated under that section.

(h) Warranties on replacement parts and components used to repair consumer products are covered; warranties on services are not covered. Therefore, warranties which apply solely to a repairer's workmanship in performing repairs are not subject to the Act. Where a written agreement warrants both the parts provided to effect a repair and the workmanship in making that repair, the warranty must

comply with the Act and the rules thereunder.

(i) The Act covers written warranties on consumer products "distributed in commerce" as that term is defined in section 101(3). Thus, by its terms the Act arguably applies to products exported to foreign jurisdictions. However, the public interest would not be served by the use of Commission resources to enforce the Act with respect to such products. Moreover, the legislative intent to apply the requirements of the Act to such products is not sufficiently clear to justify such an extraordinary result. The Commission does not contemplate the enforcement of the Act with respect to consumer products exported to foreign jurisdictions. Products exported for sale at military post exchanges remain subject to the same enforcement standards as products sold within the United States, its territories and possessions.

§ 700.2 Date of manufacture.

Section 112 of the Act provides that the Act shall apply only to those consumer products manufactured after July 4, 1975. When a consumer purchases repair of a consumer product the date of manufacture of any replacement parts used is the measuring date for determining coverage under the Act. The date of manufacture of the consumer product being repaired is in this instance not relevant. Where a consumer purchases or obtains on an exchange basis a rebuilt consumer product, the date that the rebuilding process is completed determines the Act's applicability.

[42 FR 36114, July 13, 1977; 42 FR 38341, July 28, 1977]

§ 700.3 Written warranty.

(a) The Act imposes specific duties and liabilities on suppliers who offer written warranties on consumer products. Certain representations, such as energy efficiency ratings for electrical appliances, care labeling of wearing apparel, and other product information disclosures may be express warranties under the Uniform Commercial Code. However, these disclosures alone are not written warranties under

this Act. Section 101(6) provides that a written affirmation of fact or a written promise of a specified level of performance must relate to a specified period of time in order to be considered a "written warranty."¹ A product information disclosure without a specified time period to which the disclosure relates is therefore not a written warranty. In addition, section 111(d) exempts from the Act (except section 102(c)) any written warranty the making or content of which is required by federal law. The Commission encourages the disclosure of product information which is not deceptive and which may benefit consumers, and will not construe the Act to impede information disclosure in product advertising or labeling.

(b) Certain terms, or conditions, of sale of a consumer product may not be "written warranties" as that term is defined in section 101(6), and should not be offered or described in a manner that may deceive consumers as to their enforceability under the Act. For example, a seller of consumer products may give consumers an unconditional right to revoke acceptance of goods within a certain number of days after delivery without regard to defects or failure to meet a specified level of performance. Or a seller may permit consumers to return products for any reason for credit toward purchase of another item. Such terms of sale taken alone are not written warranties under the Act. Therefore, suppliers should avoid any characterization of such terms of sale as warranties. The use of such terms as "free trial period" and "trade-in credit policy" in this regard would be appropriate. Furthermore, such terms of sale should be stated separately from any written warranty. Of course, the offering and performance of such terms of sale remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(c) The Magnuson-Moss Warranty Act generally applies to written war-

ranties covering consumer products. Many consumer products are covered by warranties which are neither intended for, nor enforceable by, consumers. A common example is a warranty given by a component supplier to a manufacturer of consumer products. (The manufacturer may, in turn, warrant these components to consumers.) The component supplier's warranty is generally given solely to the product manufacturer, and is neither intended to be conveyed to the consumer nor brought to the consumer's attention in connection with the sale. Such warranties are not subject to the Act, since a written warranty under section 101(6) of the Act must become "part of the basis of the bargain between a supplier and a buyer for purposes other than resale." However, the Act applies to a component supplier's warranty in writing which is given to the consumer. An example is a supplier's written warranty to the consumer covering a refrigerator that is sold installed in a boat or recreational vehicle. The supplier of the refrigerator relies on the boat or vehicle assembler to convey the written agreement to the consumer. In this case, the supplier's written warranty is to a consumer, and is covered by the Act.

§ 700.4 Parties "actually making" a written warranty.

Section 110(f) of the Act provides that only the supplier "actually making" a written warranty is liable for purposes of FTC and private enforcement of the Act. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor is not liable for failure of the written warranty to comply with the Act or rules thereunder. However, other actions and written and oral representations of such a supplier in connection with the offer or sale of a warranted product may obligate that supplier under the Act. If under State law the supplier is deemed to have "adopted" the written affirmation of fact, promise, or undertaking, the supplier is also obligated under the Act. Suppliers are

¹A "written warranty" is also created by a written affirmation of fact or a written promise that the product is defect free, or by a written undertaking of remedial action within the meaning of section 101(6)(B).

advised to consult State law to determine those actions and representations which may make them co-warrantors, and therefore obligated under the warranty of the other person or business.

§ 700.5 Expressions of general policy.

(a) Under section 103(b), statements or representations of general policy concerning customer satisfaction which are not subject to any specific limitation need not be designated as full or limited warranties, and are exempt from the requirements of sections 102, 103, and 104 of the Act and rules thereunder. However, such statements remain subject to the enforcement provisions of section 110 of the Act, and to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(b) The section 103(b) exemption applies only to general policies, not to those which are limited to specific consumer products manufactured or sold by the supplier offering such a policy. In addition, to qualify for an exemption under section 103(b) such policies may not be subject to any specific limitations. For example, policies which have an express limitation of duration or a limitation of the amount to be refunded are not exempted. This does not preclude the imposition of reasonable limitations based on the circumstances in each instance a consumer seeks to invoke such an agreement. For instance, a warrantor may refuse to honor such an expression of policy where a consumer has used a product for 10 years without previously expressing any dissatisfaction with the product. Such a refusal would not be a specific limitation under this provision.

§ 700.6 Designation of warranties.

(a) Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than \$10, excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty". Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption,

or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.

(b) Section 104(b)(4) states that "the duties under subsection (a) (of section 104) extend from the warrantor to each person who is a consumer with respect to the consumer product." Section 101(3) defines a consumer as "a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product. * * *." Therefore, a full warranty may not expressly restrict the warranty rights of a transferee during its stated duration. However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off as there is no transfer of ownership "during the duration of (any) warranty." Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car." Because this type of warranty leads the consumer to believe that proof of purchase is not needed so long as he or she owns the product a duty to furnish documentary proof may not be reasonably imposed on the consumer under this type of warranty. The burden is on the warrantor to prove that a particular claimant under this type of warranty is not the original purchaser or owner of the product. Warrantors or their designated agents may, however, ask consumers to state or affirm that they are the first purchaser of the product.

§ 700.7 Use of warranty registration cards.

(a) Under section 104(b)(1) of the Act a warrantor offering a full warranty may not impose on consumers any duty other than notification of a defect as a condition of securing remedy of the defect or malfunction, unless such additional duty can be demonstrated by the warrantor to be reasonable. Warrantors have in the past stipulated the return of a "warranty registration" or similar card. By "warranty registration card" the Commission means a card which must be returned by the consumer shortly after purchase of the product and which is stipulated or implied in the warranty to be a condition precedent to warranty coverage and performance.

(b) A requirement that the consumer return a warranty registration card or a similar notice as a condition of performance under a full warranty is an unreasonable duty. Thus, a provision such as, "This warranty is void unless the warranty registration card is returned to the warrantor" is not permissible in a full warranty, nor is it permissible to imply such a condition in a full warranty.

(c) This does not prohibit the use of such registration cards where a warrantor suggests use of the card as one possible means of proof of the date the product was purchased. For example, it is permissible to provide in a full warranty that a consumer may fill out and return a card to place on file proof of the date the product was purchased. Any such suggestion to the consumer must include notice that failure to return the card will not affect rights under the warranty, so long as the consumer can show in a reasonable manner the date the product was purchased. Nor does this interpretation prohibit a seller from obtaining from purchasers at the time of sale information requested by the warrantor.

§ 700.8 Warrantor's decision as final.

A warrantor shall not indicate in any written warranty or service contract either directly or indirectly that the decision of the warrantor, service contractor, or any designated third party is final or binding in any dispute

concerning the warranty or service contract. Nor shall a warrantor or service contractor state that it alone shall determine what is a defect under the agreement. Such statements are deceptive since section 110(d) of the Act gives state and federal courts jurisdiction over suits for breach of warranty and service contract.

§ 700.9 Duty to install under a full warranty.

Under section 104(a)(1) of the Act, the remedy under a full warranty must be provided to the consumer without charge. If the warranted product has utility only when installed, a full warranty must provide such installation without charge regardless of whether or not the consumer originally paid for installation by the warrantor or his agent. However, this does not preclude the warrantor from imposing on the consumer a duty to remove, return, or reinstall where such duty can be demonstrated by the warrantor to meet the standard of reasonableness under section 104(b)(1).

§ 700.10 Section 102(c).

(a) Section 102(c) prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer.

(b) Under a limited warranty that provides only for replacement of defective parts and no portion of labor charges, section 102(c) prohibits a condition that the consumer use only service (labor) identified by the warrantor to install the replacement parts. A warrantor or his designated representative may not provide parts under the warranty in a manner which impedes or precludes the choice by the consumer of the person or business to perform necessary labor to install such parts.

(c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance. For example, provisions

such as, "This warranty is void if service is performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These provisions violate the Act in two ways. First, they violate the section 102 (c) ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of "unauthorized" articles or service. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by such "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

§ 700.11 Written warranty, service contract, and insurance distinguished for purposes of compliance under the Act.

(a) The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. In addition, other agreements may meet the statutory definitions of either "written warranty" or "service contract," but are sold and regulated under state law as contracts of insurance. One example is the automobile breakdown insurance policies sold in many jurisdictions and regulated by the state as a form of casualty insurance. The McCarran-Ferguson Act, 15 U.S.C. 1011 et seq., precludes jurisdiction under federal law over "the business of insurance" to the extent an agreement is regulated by state law as insurance. Thus, such agreements are subject to the Magnuson-Moss Warranty Act only to the extent they are not regulated in a particular state as the business of insurance.

(b) "Written warranty" and "service contract" are defined in sections 101(6) and 101(8) of the Act, respectively. A written warranty must be "part of the basis of the bargain." This means that it must be conveyed at the time of sale of the consumer

product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement. It is not a requirement of the Act that an agreement obligate a supplier of the consumer product to a written warranty, but merely that it be part of the basis of the bargain between a supplier and a consumer. This contemplates written warranties by third-party non-suppliers.

(c) A service contract under the Act must meet the definitions of section 101(8). An agreement which would meet the definition of written warranty in section 101(6) (A) or (B) but for its failure to satisfy the basis of the bargain test is a service contract. For example, an agreement which calls for some consideration in addition to the purchase price of the consumer product, or which is entered into at some date after the purchase of the consumer product to which it applies, is a service contract. An agreement which relates only to the performance of maintenance and/or inspection services and which is not an undertaking, promise, or affirmation with respect to a specified level of performance, or that the product is free of defects in materials or workmanship, is a service contract. An agreement to perform periodic cleaning and inspection of a product over a specified period of time, even when offered at the time of sale and without charge to the consumer, is an example of such a service contract.

§ 700.12 Effective date of 16 CFR Parts 701 and 702.

The Statement of Basis and Purpose of the final rules promulgated on December 31, 1975, provides that Parts 701 and 702 of this chapter will become effective one year after the date of promulgation, December 31, 1976. The Commission intends this to mean that these rules apply only to written warranties on products manufactured after December 31, 1976.

PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

Sec.

701.1 Definitions.

701.2 Scope.

701.3 Written warranty terms.

701.4 Owner registration cards.

AUTHORITY: 15 U.S.C. 2302 and 2309.

SOURCE: 40 FR 60188, Dec. 31, 1975, unless otherwise noted.

§ 701.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, et seq.

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this part.

(c) "Written warranty" means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Implied warranty" means an implied warranty arising under State law (as modified by sections 104(a) and 108 of the Act) in connection with the sale by a supplier of a consumer product.

(e) "Remedy" means whichever of the following actions the warrantor elects:

(1) Repair,

(2) Replacement, or

(3) Refund; except that the warrantor may not elect refund unless: (i) The warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or

(ii) The consumer is willing to accept such refund.

(f) "Supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(g) "Warrantor" means any supplier or other person who gives or offers to give a written warranty.

(h) "Consumer" means a buyer (other than for purposes of resale or use in the ordinary course of the buyer's business) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other such person who is entitled by the terms of such warranty or under applicable State law to enforce against the warrantor the obligations of the warranty.

(i) "On the face of the warranty" means:

(1) Where the warranty is a single sheet with printing on both sides of the sheet or where the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) Where the warranty is included as part of a larger document, such as a use and care manual, the page in such document on which the warranty text begins.

§ 701.2 Scope.

The regulations in this part establish requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products actually costing the consumer more than \$15.00.

§ 701.3 Written warranty terms.

(a) Any warrantor warranting to a consumer by means of a written war-

ranty a consumer product actually costing the consumer more than \$15.00 shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:

(1) The identity of the party or parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;

(2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;

(3) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide, and, where necessary for clarification, those which the warrantor will not pay for or provide;

(4) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

(5) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: The mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance;

(6) Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with Part 703 of this subchapter;

(7) Any limitations on the duration of implied warranties, disclosed on the face of the warranty as provided in

section 108 of the Act, accompanied by the following statement:

Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

(8) Any exclusions of or limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required in paragraph (a) (7) of this section:

Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

(9) A statement in the following language:

This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.

(b) Paragraphs (a) (1) through (9) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; *Provided That:* (1) The disclosures required by paragraphs (a) (1) through (9) of this section are published by such third parties in each issue of a publication with a general circulation, and (2) such disclosures are provided free of charge to any consumer upon written request.

§ 701.4 Owner registration cards

When a warrantor employs any card such as an owner's registration card, a warranty registration card, or the like, and the return of such card is a condition precedent to warranty coverage and performance, the warrantor shall disclose this fact in the warranty. If the return of such card reasonably appears to be a condition precedent to warranty coverage and performance, but is not such a condition, that fact shall be disclosed in the warranty.

PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

Sec.

702.1 Definitions.

702.2 Scope.

702.3 Pre-sale availability of written warranty terms.

AUTHORITY: 15 U.S.C. 2302 and 2309.

SOURCE: 40 FR 60189, Dec. 31, 1975, unless otherwise noted.

§ 702.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed). Products which are purchased solely for commercial or industrial use are excluded solely for purposes of this part.

(c) "Written warranty" means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Warrantor" means any supplier or other person who gives or offers to give a written warranty.

(e) "Seller" means any person who sells or offers for sale for purposes other than resale or use in the ordi-

nary course of the buyer's business any consumer product.

(f) "Supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(g) "Binder" means a locking binder, notebook, or similar system which will provide the consumer with convenient access to copies of product warranties.

§ 702.2 Scope.

The regulations in this part establish requirements for sellers and warrantors for making the terms of any written warranty on a consumer product available to the consumer prior to sale.

§ 702.3 Pre-sale availability of written warranty terms.

The following requirements apply to consumer products actually costing the consumer more than \$15.00:

(a) *Duties of the seller.* Except as provided in paragraphs (c) through (d) of this section, the seller of a consumer product with a written warranty shall:

(1) Make available for the prospective buyer's review, prior to sale, the text of such written warranty by the use of one or more of the following means:

(i) Clearly and conspicuously displaying the text of the written warranty in close conjunction to each warranted product; and/or

(ii) Maintaining a binder or series of binders which contain(s) copies of the warranties for the products sold in each department in which any consumer product with a written warranty is offered for sale. Such binder(s) shall be maintained in each such department, or in a location which provides the prospective buyer with ready access to such binder(s), and shall be prominently entitled "Warranties" or other similar title which clearly identifies the binder(s). Such binder(s) shall be indexed according to product or warrantor and shall be maintained up to date when new warranted products or models or new warranties for existing products are introduced into the store or department by substituting superseding warranties and by adding

new warranties as appropriate. The seller shall either:

(A) Display such binder(s) in a manner reasonably calculated to elicit the prospective buyer's attention; or

(B) Make the binders available to prospective buyers on request, and place signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of the binders, including instructions for obtaining access; and/or

(iii) Displaying the package of any consumer product on which the text of the written warranty is disclosed, in a manner such that the warranty is clearly visible to prospective buyers at the point of sale; and/or

(iv) Placing in close proximity to the warranted consumer product a notice which discloses the text of the written warranty, in a manner which clearly identifies to prospective buyers the product to which the notice applies;

(2) Not remove or obscure any warranty disclosure materials provided by a warrantor, except:

(i) Where such removal is necessary for store window displays, fashion shows, or picture taking; or

(ii) Where the seller otherwise, through means provided for in paragraph (a) (1) of this section, makes the terms of the warranty information available to the consumer.

(b) *Duties of the warrantor.* (1) A warrantor who gives a written warranty warranting to a consumer a consumer product actually costing the consumer more than \$15.00 shall:

(i) Provide sellers with warranty materials necessary for such sellers to comply with the requirements set forth in paragraph (a) of this section, by the use of one or more by the following means:

(A) Providing a copy of the written warranty with every warranted consumer product; and/or

(B) Providing a tag, sign, sticker, label, decal or other attachment to the product, which contains the full text of the written warranty; and/or

(C) Printing on or otherwise attaching the text of the written warranty to the package, carton, or other container if that package, carton or other con-

tainer is normally used for display purposes. If the warrantor elects this option a copy of the written warranty must also accompany the warranted product; and/or

(D) Providing a notice, sign, or poster disclosing the text of a consumer product warranty. If the warrantor elects this option, a copy of the written warranty must also accompany each warranted product.

(ii) Provide catalog, mail order, and door-to-door sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in paragraphs (c) and (d) of this section.

(2) Paragraph (a) (1) of this section shall not be applicable with respect to statements of general policy on emblems, seals or insignias issued by third parties promising replacement or refund if a consumer product is defective, which statements contain no representation or assurance of the quality or performance characteristics of the product; provided that (i) the disclosures required by § 701.3(a) (1) through (9) of this part are published by such third parties in each issue of a publication with a general circulation, and (ii) such disclosures are provided free of charge to any consumer upon written request.

(c) *Catalog and Mail Order Sales.* (1) For purposes of this paragraph:

(i) "Catalog or mail order sales", means any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller's establishment.

(ii) "Close conjunction" means on the page containing the description of the warranted product, or on the page facing that page.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog or mail order solicitation shall:

(i) Clearly and conspicuously disclose in such catalog or solicitation in close conjunction to the description of warranted product, or in an information section of the catalog or solicitation clearly referenced, including a page number, in close conjunction to

the description of the warranted product, *either*:

(A) The full text of the written warranty; or

(B) That the written warranty can be obtained free upon specific written request, and the address where such warranty can be obtained. If this option is elected, such seller shall promptly provide a copy of any written warranty requested by the consumer.

(d) *Door-to-door sales.* (1) For purposes of this paragraph:

(i) "Door-to-door sale" means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

(ii) "Prospective buyer" means an individual solicited by a door-to-door seller to buy a consumer product who indicates sufficient interest in that consumer product or maintains sufficient contact with the seller for the seller reasonably to conclude that the person solicited is considering purchasing the product.

(2) Any seller who offers for sale to consumers consumer products with written warranties by means of door-to-door sales shall, prior to the consummation of the sale, disclose the fact that the sales representative has copies of the warranties for the warranted products being offered for sale, which may be inspected by the prospective buyer at any time during the sales presentation. Such disclosure shall be made orally and shall be included in any written materials shown to prospective buyers.

PART 703—INFORMAL DISPUTE SETTLEMENT PROCEDURES

Sec.

703.1 Definitions.

703.2 Duties of warrantor.

MINIMUM REQUIREMENTS OF THE MECHANISM

703.3 Mechanism organization.

703.4 Qualification of members.

703.5 Operation of the Mechanism.

703.6 Recordkeeping.

Sec.

703.7 Audits.

703.8 Openness of records and proceedings.

AUTHORITY: 15 U.S.C. 2309 and 2310.

SOURCE: 40 FR 60215, Dec. 31, 1975, unless otherwise noted.

§ 703.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) "Written warranty" means:

(1) Any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Warrantor" means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

(e) "Mechanism" means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act.

(f) "Members" means the person or persons within a Mechanism actually deciding disputes.

(g) "Consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

(h) "On the face of the warranty" means:

(1) If the warranty is a single sheet with printing on both sides of the sheet, or if the warranty is comprised of more than one sheet, the page on which the warranty text begins;

(2) If the warranty is included as part of a longer document, such as a use and care manual, the page in such document on which the warranty text begins.

§ 703.2 Duties of warrantor.

(a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in §§ 703.3 through 703.8 of this part. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a) (7) of the Act and required by Part 701 of this subchapter.

(b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

(1) A statement of the availability of the informal dispute settlement mechanism;

(2) The name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;

(3) A statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to

the Mechanism would not be required by any provision of the Act; and

(4) A statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c) of this section.

(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

(1) Either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or (ii) a telephone number of the Mechanism which consumers may use without charge;

(2) The name and address of the Mechanism;

(3) A brief description of Mechanism procedures;

(4) The time limits adhered to by the Mechanism; and

(5) The types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) The warrantor shall take steps reasonably calculated to make consumers aware of the Mechanism's existence at the time consumers experience warranty disputes. Nothing contained in paragraphs (b), (c), or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor as long as the warrantor does not expressly require consumers to seek redress directly from the warrantor. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

(e) Whenever a dispute is submitted directly to the warrantor, the warrantor shall, within a reasonable time, decide whether, and to what extent, it will satisfy the consumer, and inform the consumer of its decision. In its notification to the consumer of its decision, the warrantor shall include the information required in § 703.2 (b) and (c) of this section.

(f) The warrantor shall: (1) Respond fully and promptly to reasonable requests by the Mechanism for information relating to disputes;

(2) Upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism whether, and to what extent, warrantor will abide by the decision; and

(3) Perform any obligations it has agreed to.

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any reasonable requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

MINIMUM REQUIREMENTS OF THE MECHANISM

§ 703.3 Mechanism organization.

(a) The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the Mechanism.

(b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps shall include, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to Mechanism staff persons.

(c) The Mechanism shall impose any other reasonable requirements necessary to ensure that the members and staff act fairly and expeditiously in each dispute.

§ 703.4 Qualification of members.

(a) No member deciding a dispute shall be: (1) A party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) A person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or

an employee or agent of such person other than for purposes of deciding disputes. For purposes of this paragraph (a) a person shall not be considered a "party" solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. "Direct involvement" shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

(c) Members shall be persons interested in the fair and expeditious settlement of consumer disputes.

§ 703.5 Operation of the Mechanism.

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (b) through (j) of this section. Copies of the written procedures shall be made available to any person upon request.

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute.

(c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. When any evidence gathered by or submitted to the Mechanism raises issues relating to the number of repair attempts, the

length of repair periods, the possibility of unreasonable use of the product, or any other issues relevant in light of Title I of the Act (or rules thereunder), including issues relating to consequential damages, or any other remedy under the Act (or rules thereunder), the Mechanism shall investigate these issues. When information which will or may be used in the decision, submitted by one party, or a consultant under § 703.4(b) of this part, or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

(d) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute, except as provided in paragraph (e) of this section:

(1) Render a fair decision based on the information gathered as described in paragraph (c) of this section, and on any information submitted at an oral presentation which conforms to the requirements of paragraph (f) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) Disclose to the warrantor its decision and the reasons therefor;

(3) If the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) Disclose to the consumer its decision, the reasons therefor, warrantor's intended actions (if the decision would require action on the part of the warrantor), and the information described in paragraph (g) of this section. For

purposes of paragraph (d) of this section a dispute shall be deemed settled when the Mechanism has ascertained from the consumer that:

(i) The dispute has been settled to the consumer's satisfaction; and (ii) the settlement contains a specified reasonable time for performance.

(e) The Mechanism may delay the performance of its duties under paragraph (d) of this section beyond the 40 day time limit:

(1) Where the period of delay is due solely to failure of a consumer to provide promptly his or her name and address, brand name and model number of the product involved, and a statement as to the nature of the defect or other complaint; or

(2) For a 7 day period in those cases where the consumer has made no attempt to seek redress directly from the warrantor.

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if: (1) Both warrantor and consumer expressly agree to the presentation;

(2) Prior to agreement the Mechanism fully discloses to the consumer the following information:

(i) That the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) That the members will decide the dispute whether or not an oral presentation is made;

(iii) The proposed date, time and place for the presentation; and

(iv) A brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) Each party has the right to be present during the other party's oral presentation. Nothing contained in this paragraph (b) of this section shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure re-

quired in paragraph (d) of this section that:

(1) If he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

(2) The Mechanism's decision is admissible in evidence as provided in section 110(a) (3) of the Act; and

(3) The consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement agreed to after notification to the Mechanism of the dispute or as a result of a decision under paragraph (d) of this section, the Mechanism shall ascertain from the consumer within 10 working days of the date for performance whether performance has occurred.

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (d) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its paragraph (d) of this section duties as allowed by paragraph (e) of this section, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay allowed by paragraph (e) of this section has ended.

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g) of this part. In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a) (3) of the Act.

§ 703.6 Recordkeeping.

(a) The Mechanism shall maintain records on each dispute referred to it which shall include:

(1) Name, address and telephone number of the consumer;

(2) Name, address, telephone number and contact person of the warrantor;

(3) Brand name and model number of the product involved;

(4) The date of receipt of the dispute and the date of disclosure to the consumer of the decision;

(5) All letters or other written documents submitted by either party;

(6) All other evidence collected by the Mechanism relating to the dispute, including summaries of relevant and material portions of telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b) of this part);

(7) A summary of any relevant and material information presented by either party at an oral presentation;

(8) The decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;

(9) A copy of the disclosure to the parties of the decision;

(10) A statement of the warrantor's intended action(s);

(11) Copies of follow-up letters (or summaries of relevant and material portions of follow-up telephone calls) to the consumer, and responses thereto; and

(12) Any other documents and communications (or summaries of relevant and material portions of oral communications) relating to the dispute.

(b) The Mechanism shall maintain an index of each warrantor's disputes grouped under brand name and subgrouped under product model.

(c) The Mechanism shall maintain an index for each warrantor as will show:

(1) All disputes in which the warrantor has promised some performance (either by settlement or in response to a Mechanism decision) and has failed to comply; and

(2) All disputes in which the warrantor has refused to abide by a Mechanism decision.

(d) The Mechanism shall maintain an index as will show all disputes delayed beyond 40 days.

(e) The Mechanism shall compile semi-annually and maintain statistics

which show the number and percent of disputes in each of the following categories:

(1) Resolved by staff of the Mechanism and warrantor has complied;

(2) Resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(3) Resolved by staff of the Mechanism and time for compliance has not yet occurred;

(4) Decided by members and warrantor has complied;

(5) Decided by members, time for compliance has occurred, and warrantor has not complied;

(6) Decided by members and time for compliance has not yet occurred;

(7) Decided by members adverse to the consumer;

(8) No jurisdiction;

(9) Decision delayed beyond 40 days under § 703.5(e)(1) of this part;

(10) Decision delayed beyond 40 days under § 703.5(e)(2) of this part;

(11) Decision delayed beyond 40 days for any other reason; and

(12) Pending decision.

(f) The Mechanism shall retain all records specified in paragraphs (a) through (e) of this section for at least 4 years after final disposition of the dispute.

§ 703.7 Audits.

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 of this part shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include at a minimum the following:

(1) Evaluation of warrantors' efforts to make consumers aware of the Mechanism's existence as required in § 703.2(d) of this part;

(2) Review of the indexes maintained pursuant to § 703.6 (b), (c), and (d) of this part; and

(3) Analysis of a random sample of disputes handled by the Mechanism to determine the following:

(i) Adequacy of the Mechanism's complaint and other forms, investiga-

tion, mediation and follow-up efforts, and other aspects of complaint handling; and

(ii) Accuracy of the Mechanism's statistical compilations under § 703.6(e) of this part. (For purposes of this subparagraph "analysis" shall include oral or written contact with the consumers involved in each of the disputes in the random sample.)

(c) A report of each audit under this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

(d) Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

§ 703.8 Openness of records and proceedings.

(a) The statistical summaries specified in § 703.6(e) of this part shall be available to any person for inspection and copying.

(b) Except as provided under paragraphs (a) and (e) of this section, and paragraph (c) of § 703.7 of this part, all records of the Mechanism may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a) of this part; the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute:

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(1) Access to all records relating to the dispute; and

(2) Copies of any records relating to the dispute, at reasonable cost.

(f) The Mechanism shall make available to any person upon request, information relating to the qualifications of Mechanism staff and members.

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTI-TRUST IMPROVEMENTS ACT OF 1976**PART 800—TRANSITIONAL RULE****§ 800.1 Transitional rule.**

(a) This rule is promulgated under the authority of subsection (d)(2)(C) of section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 15 U.S.C. sec. 18A, hereinafter referred to as "this section." References to specific subsections refer to subsections thereof.

(b) An acquisition shall be exempt from all requirements of this section if made on or after February 27, 1977, and before the effective date of the notification and report form and rules promulgated by the Federal Trade Commission under the authority of this section (hereinafter referred to as the "form" and "rules" respectively). Such date shall be identified in the **FEDERAL REGISTER** at least 30 days in advance.

(c)(1) An acquisition made on or after the effective date of the form and rules shall be exempt from the waiting period required by paragraph (a) of this section, except as provided by paragraph (c)(2) of this section, if:

(i) All persons required by this section and the rules to file notification with respect to such acquisition (or in the case of an acquisition described by § 801.30(a) of the rules, the acquiring person) file notification with both the Federal Trade Commission and the Assistant Attorney General, in the manner prescribed by the rules, on the effective date of the form and rules. Notification received by the Federal Trade Commission and Assistant Attorney General prior to the effective date of the rules shall be deemed to be filed on the effective date of the form and rules;

(ii) Neither the Federal Trade Commission nor the Assistant Attorney General requests additional information or documentary material, pursuant to subsection (e) and the rules, from any person filing notification with respect to such acquisition, prior

to the consummation of the acquisition, and

(iii) The acquisition is consummated no later than 30 (or, in the case of cash tender offers, as defined in the rules, 15) calendar days after the effective date of the form and rules.

(2) In the event of a request for additional information or documentary material, the waiting period normally deriving from such a request, pursuant to paragraph (e) of this section and the rules, shall take effect at the time of such request, and shall expire, or be terminated, or terminated, or extended thereafter in accordance with this section and the rules.

(d) All acquisitions otherwise subject to the requirements of this section, and not falling within paragraphs (b) or (c) of this section, shall be subject to the requirements of this section and the rules.

(e) In the case of an acquisition described by § 801.30 of this chapter and falling within paragraph (c) of this section, persons other than the acquiring person shall file such notification as is required by this section and the rules.

(Sec. 201(d)(2)(C), Pub. L. 94-435; 15 U.S.C. sec. 18A)

[43 FR 27517, June 26, 1978]

PART 801—COVERAGE RULES

Sec.

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- 801.40 Formation of joint venture or other corporations.
- 801.90 Transactions or devices for avoidance.

AUTHORITY: Sec. 7A(d), Clayton Act, 15 U.S.C. 18A(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

SOURCE: 43 FR 33537, July 31, 1978, unless otherwise noted.

§ 801.1 Definitions.

When used in the act and these rules—

(a)(1) *Person*. Except as provided in paragraphs (a) and (b) of § 801.12, the term "person" means an ultimate parent entity and all entities which it controls directly or indirectly.

Examples: 1. In the case of corporations, "person" encompasses the entire corporate structure, including all parent corporations, subsidiaries and divisions (whether consolidated or unconsolidated, and whether incorporated or unincorporated), and all related corporations under common control with any of the foregoing.

2. Corporations A and B are each directly controlled by the same foreign state. They are not included within the same "person," although the corporations are under common control, because the foreign state which controls them is not an "entity" (see § 801.1(a)(2)). Corporations A and B* are the ultimate parent entities within persons "A," and "B" which include any entities each may control.

3. Since a natural person is an entity (see § 801.1(a)(2)), a natural person and a corporation which he or she controls are part of the same "person." If that natural person controls two otherwise separate corporations, both corporations and the natural person are all part of the same "person."

4. See the example to § 801.2(a).

* Throughout the examples to the rules, persons are designated ("A," "B," etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks.

(2) *Entity*. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules: *Provided, however*, That the term "entity" shall not include any foreign state, foreign government, or agency thereof (other than a corporation engaged in commerce), nor the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce).

(3) *Ultimate parent entity*. The term "ultimate parent entity" means an entity which is not controlled by any other entity.

Examples: 1. If corporation A holds 100 percent of the stock of subsidiary B, and B holds 75 percent of the stock of its subsidiary C, corporation A is the ultimate parent entity, since it controls subsidiary B directly and subsidiary C indirectly, and since it is the entity within the person which is not controlled by any other entity.

2. If corporation A is controlled by natural person D, natural person D is the ultimate parent entity.

3. P and Q are the ultimate parent entities within persons "P" and "Q." If P and Q each own 50 percent of the voting securities of R, then P and Q are both ultimate parents of R, and R is part of both persons "P" and "Q."

(b) *Control*. The term "control" (as used in the terms "control(s)," "controlling," "controlled by," and "under common control with") means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of unincorporated entities,

of individuals exercising similar functions.

Example: Corporation A holds 100 percent of the stock of corporation B, 75 percent of the stock of corporation C, 50 percent of the stock of corporation D, and 30 percent of the stock of corporation E. Corporation A controls corporations B, C and D, but not corporation E. Corporation A is the ultimate parent entity of a person comprised of corporations A, B, C and D, and each of these corporations (but not corporation E) is "included within the person."

(c) *Hold.* (1) Subject to the provisions of paragraphs (c)(2) through (8) of this section, the term "hold" (as used in the terms "hold(s)," "holding," "holder" and "held") means beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means.

Example: If a stockbroker has stock in "street name" for the account of a natural person, only the natural person (who has beneficial ownership) and not the stockbroker (which may have record title) "holds" that stock.

(2) The holdings of spouses and their minor children shall be holdings of each of them.

(3) Except for a common trust fund or collective investment fund within the meaning of 12 CFR 9.18(a) (both of which are hereafter referred to in this paragraph as "collective investment funds"), and any revocable trust or an irrevocable trust in which the settlor retains a reversionary interest in the corpus, a trust, including a pension trust, shall hold all assets and voting securities constituting the corpus of the trust.

Example: Under this paragraph the trust—and not the trustee—holds the voting securities and assets constituting the corpus of any irrevocable trust (in which the settlor retains no reversionary interest, and which is not a collective investment fund). Therefore, the trustee need not aggregate its holdings of any other assets or voting securities with the holdings of the trust for purposes of determining whether the requirements of the act apply to an acquisition by the trust. Similarly, the trustee, if making an acquisition for its own account, need not aggregate its holdings with those of any trusts for which it serves as trustee. (However, the trustee must aggregate any collective investment funds which it administers: see paragraph (c)(6) of this section.)

(4) The assets and voting securities constituting the corpus of a revocable trust or the corpus of an irrevocable trust in which the settlor(s) retain(s) a reversionary interest in the corpus shall be holdings of the settlor(s) of such trust.

(5) Except as provided in paragraph (c)(4) of this section, beneficiaries of a trust, including a pension trust or a collective investment fund, shall not hold any assets or voting securities constituting the corpus of such trust.

(6) A bank or trust company which administers one or more collective investment funds shall hold all assets and voting securities constituting the corpus of each such fund.

Example: Suppose A, a bank or trust company, administers collective investment funds W, X, Y and Z. Whenever person "A" is to make an acquisition, whether of not on behalf of one or more of the funds, it must aggregate the holdings of W, X, Y and Z in determining whether the requirements of the act apply to the acquisition.

(7) An insurance company shall hold all assets and voting securities held for the benefit of any general account of, or any separate account administered by, such company.

(8) A person holds all assets and voting securities held by the entities included within it; in addition to its own holding, an entity holds all assets and voting securities held by the entities which it controls directly or indirectly.

(d) *Affiliate.* An entity is an affiliate of a person if it is controlled, directly or indirectly, by the ultimate parent entity of such person.

(e)(1)(i) *United States person.* The term "United States person" means a person the ultimate parent entity of which—

(A) Is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States; or

(B) Is a natural person, either is a citizen of the United States or resides in the United States.

(ii) *United States issuer.* The term "United States issuer" means an issuer which is incorporated in the United States, is organized under the laws of

the United States or has its principal offices within the United States.

(2)(i) *Foreign person.* The term "foreign person" means a person the ultimate parent entity of which—

(A) Is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States; or

(B) If a natural person, neither is a citizen of the United States nor resides in the United States.

(ii) *Foreign issuer.* The term "foreign issuer" means an issuer which is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States.

(f)(1) *Voting securities.* The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or of an entity included within the same person as the issuer, or, with respect to unincorporated entities, individuals exercising similar functions.

(2) *Convertible voting security.* The term "convertible voting security" means a voting security which presently does not entitle its owner or holder to vote for directors of any entity.

(3) *Conversion.* The term "conversion" means the exercise of a right inherent in the ownership or holding of particular voting securities to exchange such securities for securities which presently entitle the owner or holder to vote for directors of the issuer or of any entity included within the same person as the issuer.

Examples. 1. The acquisition of convertible debentures which are convertible into common stock is an acquisition of "voting securities." However, § 802.31 exempts the acquisition of such securities from the requirements of the act, provided that they have no present voting rights.

2. Options and warrants are also "voting securities" for purposes of the act, because they can be exchanged for securities with present voting rights. Section 802.31 exempts the acquisition of options and warrants as well, since they do not themselves have present voting rights and hence are convertible voting securities. Notification may be required prior to exercising options and warrants, however.

3. Assume that X has issued preferred shares which presently entitle the holder to vote for directors of X, and that these shares are convertible into common shares of X. Because the preferred shares confer a present right to vote for directors of X, they are "voting securities." (See § 801.1(f)(1).) They are not "convertible voting securities," however, because the definition of that term excludes securities which confer a present right to vote for directors of any entity. (See § 801.1(f)(2).) Thus, an acquisition of these preferred shares issued by X would not be exempt as an acquisition of "convertible voting securities." (See § 802.31.) If the criteria in section 7A(a) are met, an acquisition of X's preferred shares would be subject to the reporting and waiting period requirements of the Act. Moreover, the conversion of these preferred shares into common shares of X would also be potentially reportable, since the holder would be exercising a right to exchange particular voting securities for different voting securities having a present right to vote for directors of the issuer. Because this exchange would be a "conversion," § 801.30 would apply. (See § 801.30(a)(6).)

(g)(1) *Tender offer.* The term "tender offer" means any offer to purchase voting securities which is a tender offer within the meaning of section 14 of the Securities Exchange Act of 1934, 15 U.S.C. 78n.

(2) *Cash tender offer.* The term "cash tender offer" means a tender offer in which cash is the only consideration offered to the holders of the voting securities to be acquired.

(3) *Non-cash tender offer.* The term "non-cash tender offer" means any tender offer which is not a cash tender offer.

(h) *Notification threshold.* The term "notification threshold" means:

(1) Fifteen percent of the outstanding voting securities of an issuer, or an aggregate total amount of voting securities and assets of the acquired person valued in excess of \$15 million;

(2) Fifteen percent of the outstanding voting securities of an issuer, if valued in excess of \$15 million;

(3) Twenty-five percent of the outstanding voting securities of an issuer, or

(4) Fifty percent of the outstanding voting securities of an issuer.

(i)(1) *Solely for the purpose of investment.* Voting securities are held or acquired "solely for the purpose of in-

vestment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

Example: If a person holds stock "solely for the purpose of investment" and thereafter decides to influence or participate in management of the issuer of that stock, the stock is no longer held "solely for the purpose of investment."

(2) *Investment assets.* The term "investment assets" means cash, deposits in financial institutions, other money market instruments, and instruments evidencing government obligations.

(j) *Engaged in manufacturing.* A person is "engaged in manufacturing" if it produces and derives annual sales or revenues in excess of \$1 million from products within industries 2000-3999 as coded in the Standard Industrial Classification Manual (1972 edition) published by the Executive Office of the President, Office of Management and Budget.

(k) *United States.* The term "United States" shall include the several States, the territories, possessions, and commonwealths of the United States, and the District of Columbia.

(l) *Commerce.* The term "commerce" shall have the meaning ascribed to that term in section 1 of the Clayton Act, 15 U.S.C. 12, or section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

(m) *The act.* References to "the act" refer to section 7A of the Clayton Act, 15 U.S.C. 18A, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390. References to "section 7A(c)" refer to subsections thereof. References to "this section" refer to the section of these rules in which the term appears.

[43 FR 33537, July 31, 1978, as amended at 48 FR 34429, July 29, 1983]

§ 801.2 Acquiring and acquired persons.

(a) Any person which, as a result of an acquisition, will hold voting securities or assets, either directly or indirectly, or through fiduciaries, agents, or other entities acting on behalf of such person, is an acquiring person.

Example: Assume that corporations A and B, which are each ultimate parent entities of their respective "persons," created a joint venture, corporation V, and that each holds half of V's shares. Therefore, A and B each control V (see § 801.1(b)), and V is included within two persons, "A" and "B." Under this section, if V is to acquire corporation X, both "A" and "B" are acquiring persons.

(b) Except as provided in paragraphs (a) and (b) of § 801.12, the person(s) within which the entity whose assets or voting securities are being acquired is included, is an acquired person.

Examples: 1. Assume that person "Q" will acquire voting securities of corporation X held by "P" and that X is not included within person "P." Under this section, the acquired person is the person within which X is included, and is not "P."

2. In the example to paragraph (a) of this section, if V were to be acquired by X, then both "A" and "B" would be acquired persons.

(c) For purposes of the act and these rules, a person may be an acquiring person and an acquired person with respect to separate acquisitions which comprise a single transaction.

(d)(1)(i) Mergers and consolidations are transactions subject to the act and shall be treated as acquisitions of voting securities.

(ii) In a merger, the person which, after consummation, will include the corporation in existence prior to consummation which is designated as the surviving corporation in the plan, agreement, or certificate of merger required to be filed with State authorities to effectuate the transaction shall be deemed to have made an acquisition of voting securities.

(2)(i) Any person party to a merger or consolidation is an acquiring person if, as a result of the transaction, such person will hold any assets or voting securities which it did not hold prior to the transaction.

(ii) Any person party to a merger or consolidation is an acquired person if, as a result of the transaction, the assets or voting securities of any entity included within such person will be held by any other person.

(iii) All persons party to a transaction as a result of which all parties will lose their separate pre-acquisition

identities shall be both acquiring and acquired persons.

Examples: 1. Corporation A (the ultimate parent entity included within person "A") proposes to acquire Y, a wholly-owned subsidiary of B (the ultimate parent entity included within person "B"). The transaction is to be carried out by merging Y into X, a wholly-owned subsidiary of A, with X surviving, and by distributing the assets of X to B, the only shareholder of Y. The assets of X consist solely of cash and the voting securities of C, an entity unrelated to "A" or "B". Since X is designated the surviving corporation in the plan or agreement of merger or consolidation and since X will be included in "A" after consummation of the transaction, "A" will be deemed to have made an acquisition of voting securities. In this acquisition, "A" is an acquiring person because it will hold assets or voting securities it did not hold prior to the transaction, and "B" is an acquired person because the assets or the voting securities of an entity previously included within it will be held by A as a result of the acquisition. B will hold the cash and voting securities of C as a result of the transaction, but since § 801.21 applies, this acquisition is not reportable. "A" is therefore an acquiring person only, and "B" is an acquired person only. "B" may, however, have a separate reporting obligation as an acquiring person in a separate transaction involving the voting securities of C.

2. In the above example, suppose the consideration for Y consists of \$8 million worth of the voting securities of A, constituting less than 15% of A's outstanding voting securities. With regard to the transfer of this consideration, "B" is an acquiring person because it will hold voting securities it did not previously hold, and "A" is an acquired person because its voting securities will be held by B. Since these voting securities are worth less than \$15 million and constitute less than 15% of the outstanding voting securities of A, however, the acquisition of these securities is not reportable. "A" will therefore report as an acquiring person only and "B" as an acquired person only.

3. In the above example, suppose the consideration for Y is 50% of the voting securities of Z, a wholly-owned subsidiary of A which, together with all entities it controls, has annual net sales and total assets of less than \$25 million. Suppose also that the value of these securities is less than \$15 million. Since the acquisition of the voting securities of Z is exempt under the minimum dollar value exemption in § 802.20, "A" will report in this transaction as an acquiring person only and "B" as an acquired person only.

4. In the above example, suppose that, as consideration for Y, A transfers to B a manufacturing plant valued at \$16 million. "P"

is thus an acquiring person and "A" an acquired person in a reportable acquisition of assets. "A" and "B" will each report as both an acquiring and an acquired person in this transaction because each occupies each role in a reportable acquisition.

5. Corporations A (the ultimate parent entity in person "A") and B (the ultimate parent entity in person "B") propose to consolidate into C, a newly formed corporation. All shareholders of A and B will receive shares of C, and both A and B will lose their separate pre-acquisition identities. "A" and "B" are both acquiring and acquired persons because they are parties to a transaction in which all parties lose their separate pre-acquisition identities.

(e) Whenever voting securities or assets are to be acquired from an acquiring person in connection with an acquisition, the acquisition of voting securities or assets shall be separately subject to the act.

[43 FR 3537, July 31, 1978, as amended at 48 FR 34431, July 29, 1983]

§ 801.3 Activities in or affecting commerce.

Section 7A(a)(1) is satisfied if any entity included within the acquiring person, or any entity included within the acquired person, is engaged in commerce or in any activity affecting commerce.

Example: 1. A foreign subsidiary of a U.S. corporation seeks to acquire a foreign business. The acquiring person includes the U.S. parent corporation, the U.S. corporation, or the foreign subsidiary, or any entity controlled by either one of them; is engaged in commerce or in any activity affecting commerce, section 7A(a)(1) is satisfied. Note, however, that §§ 802.50-802.52 may exempt certain acquisitions of foreign businesses or assets.

2. Even if none of the entities within the acquiring person is engaged in commerce or in any activity affecting commerce, the acquisition nevertheless satisfies section 7A(a)(1) if any entity included within the acquired person is so engaged.

[43 FR 3537, July 31, 1978; 43 FR 36054, Aug. 15, 1978]

§ 801.4 Secondary acquisitions.

(a) Whenever as a result of an acquisition (the "primary acquisition") an acquiring person will obtain control of an issuer which holds voting securities of another issuer which it does not control, then the acquisition of the

other issuer's voting securities is a secondary acquisition and is separately subject to the act and these rules.

(b) *Exemptions.* (1) No secondary acquisition shall be exempt from the requirements of the act solely because the related primary acquisition is exempt from the requirements of the act.

(2) A secondary acquisition may itself be exempt from the requirements of the act under section 7A(c) or these rules.

Examples: 1. Assume that acquiring person "A" proposes to acquire all the voting securities of corporation B. This section provides that the acquisition of voting securities of issuers held but not controlled by B or by any entity which B controls are secondary acquisitions by "A." Thus, if B holds more than \$15 million of the voting securities of corporation X (but does not control X), and "A" and "X" satisfy sections 7A (a)(1) and (a)(2), "A" must file notification separately with respect to its secondary acquisition of voting securities of X. "X" must file notification within fifteen days after "A" files, pursuant to § 801.30.

2. If in the previous example "A" acquires only 50 percent of the voting securities of B, the result would remain the same. Since "A" would be acquiring control of B, all of B's holdings in X would be attributable to "A."

3. In the previous examples, if "A's" acquisition of the voting securities of B is exempt, "A" may still be required to file notification with respect to its secondary acquisition of the voting securities of X, unless that acquisition is itself exempt.

4. In the previous examples, assume A's acquisition of B is accomplished by merging B into A's subsidiary, S, and S is designated the surviving corporation. B's voting securities are cancelled, and B's shareholders are to receive cash in return. Since S is designated the surviving corporation and A will control S and also hold assets or voting securities it did not hold previously, "A" is an acquiring person in an acquisition of voting securities by virtue of §§ 801.2 (d)(1)(ii) and (d)(2)(i). A will be deemed to have acquired control of B, and A's resulting acquisition of the voting securities of X is a secondary acquisition. Since cash, the only consideration paid for the voting securities of B, is not considered an asset of the person from which it is acquired, by virtue of § 801.2(d)(2) "A" is an acquiring person only. The acquisition of the minority holding of B in X is therefore a secondary acquisition by "A," but since "B" is an acquired person only, "B" is not deemed to make any secondary acquisition in this transaction.

5. In example 4 above, suppose the consideration paid by A for the acquisition of B is \$20 million worth of the voting securities of A. By virtue of § 801.2(d)(2), "A" and "B" are each both acquiring and acquired persons. A will still be deemed to have acquired control of B, and therefore the resulting acquisition of the voting securities of X is a secondary acquisition. Although "B" is now also an acquiring person, unless B gains control of A in the transaction, B still makes no secondary acquisitions of stock held by A. If the consideration paid by A is the voting securities of one of A's subsidiaries and B thereby gains control of that subsidiary, B will make secondary acquisitions of any minority holdings of that subsidiary.

6. Assume that A and B propose through consolidation to create a new corporation, C, and that both A and B will lose their corporate identities as a result. Since no participating corporation in existence prior to consummation is the designated surviving corporation, "A" and "B" are each both acquiring and acquired persons by virtue of § 801.2(d)(2)(iii). The acquisition of the minority holdings of entities within each are therefore potential secondary acquisitions by the other.

(c) Where the primary acquisition is—

(1) A cash tender offer, the waiting period procedures established for cash tender offers pursuant to sections 7A(a) and 7A(e) of the act shall be applicable to both the primary acquisition and the secondary acquisition; (2) a non-cash tender offer, the waiting period procedures established for tender offers pursuant to section 7A(e)(2) of the act shall be applicable to both the primary acquisition and the secondary acquisition.

[43 FR 33537, July 31, 1978, as amended at 48 FR 34432, July 29, 1983]

§ 801.10 Value of voting securities and assets to be acquired.

Except as provided in § 801.13, the value of voting securities and assets to be acquired shall be determined as follows:

(a) *Voting securities.* (1) If the security is traded on a national securities exchange or is authorized to be quoted in an interdealer quotation system of a national securities association registered with the U.S. Securities and Exchange Commission—

(i) And the acquisition price has been determined, the value shall be

the market price or the acquisition price, whichever is greater; or if

(ii) The acquisition price has not been determined, the value shall be the market price.

(2) If paragraph (a)(1) of this section is inapplicable—

(i) But the acquisition price has been determined, the value shall be the acquisition price; or if

(i) The acquisition price has not been determined, the value shall be the fair market value.

(b) *Assets.* The value of assets to be acquired shall be the fair market value of the assets, or, if determined and greater than the fair market value, the acquisition price.

(c) For purposes of this section and § 801.13(a)(2):

(1) *Market price.* (i) For acquisitions subject to § 801.30, the market price shall be the lowest closing quotation, or, in an interdealer quotation system, the lowest closing bid price, within the 45 calendar days prior to the receipt of the notice required by § 803.5(a) or prior to the consummation of the acquisition.

(ii) For acquisitions not subject to § 801.30, the market price shall be the lowest closing quotation, or, in an interdealer quotation system, the lowest closing bid price, within the 45 or fewer calendar days which are prior to the consummation of the acquisition but not earlier than the day prior to the execution of the contract, agreement in principle or letter of intent to merge or acquire.

(iii) When the security was not traded within the period specified by this paragraph, the last closing quotation or closing bid price preceding such period shall be used. If such closing quotations are available in more than one market, the person filing notification may select any such quotation.

(2) *Acquisition price.* The acquisition price shall include the value of all consideration for such voting securities or assets to be acquired.

(3) *Fair market value.* The fair market value shall be determined in good faith by the board of directors of the ultimate parent entity included within the acquiring person, or, if unincorporated, by officials exercising

similar functions; or by an entity delegated that function by such board or officials. Such determination must be made as of any day within 60 calendar days prior to the filing of the notification required by the act, or, if such notification has not been filed, within 60 calendar days prior to the consummation of the acquisition.

Example: Corporation A, the ultimate parent entity in person "A," contracts to acquire assets of corporation B, and the contract provides that the acquisition price is not to be determined until after the acquisition is effected. Under paragraph (b) of this section, for purposes of the act the value of the assets is to be the fair market value of the assets. Under paragraph (c)(3), the board of directors of corporation A must in good faith determine the fair market value. That determination will control for 60 days whether "A" and "B" must observe the requirements of the act; that is, "A" and "B" must either file notification or consummate the acquisition within that time. If "A" and "B" neither file nor consummate within 60 days, the parties would no longer be entitled to rely on the determination of fair market value, and, if in doubt about whether required to observe the requirements of the act, would have to make a second determination of fair market value. Note that since item 2(d)(i) of the Notification and Report Form only requests the approximate dollar value of assets, a second formal determination of the fair market value would not be necessary for that purpose.

§ 801.11 Annual net sales and total assets.

(a) The annual net sales and total assets of a person shall include all net sales and all assets held, whether foreign or domestic, except as provided in paragraph (d) of this section.

(b) Except for the total assets of a joint venture or other corporation at the time of its formation which shall be determined pursuant to § 801.40(c), the annual net sales and total assets of a person shall be as stated on the financial statements specified in paragraph (c) of this section: *Provided:*

(1) That the annual net sales and total assets of each entity included within such person are consolidated therein. If the annual net sales and total assets of any entity included within the person are not consolidated in such statements, the annual net sales and total assets of the person filing notification shall be recomputed

to include the nonduplicative annual net sales and nonduplicative total assets of each such entity; and

(2) That such statements, and any restatements pursuant to paragraph (b)(1) of this section (insofar as possible), have been prepared in accordance with the accounting principles normally used by such person, and are of a date not more than 15 months prior to the date of filing of the notification required by the act, or the date of consummation of the acquisition.

Example: Person "A" is composed of entity A, subsidiaries B1 and B2 which A controls, subsidiaries C1 and C2 which B1 controls, and subsidiary C3 which B2 controls. Suppose that A's most recent financial statement consolidates the annual net sales and total assets of B1, C1, and C2, but not B2 or C3. In order to determine whether person "A" meets the criteria of section 7A(a)(2), as either an acquiring or an acquired person, A must recompute its annual net sales and total assets to reflect consolidation of the nonduplicative annual net sales and nonduplicative total assets of B2 and C3.

(c) Subject to the provisions of paragraph (b) of this section:

(1) The annual net sales of a person shall be as stated on the last regularly prepared annual statement of income and expense of that person; and

(2) The total assets of a person shall be as stated on the last regularly prepared balance sheet of that person.

Example: Suppose "A" sells assets to "B" on January 1. "A's" next regularly prepared balance sheet, dated February 1, reflects that sale. On March 1, "A" proposes to sell more assets to "B." "A's" total assets on March 1 are "A's" total assets as stated on its February 1 balance sheet.

(d) No assets of any natural person or of any estate of a deceased natural person, other than investment assets, voting securities and other income-producing property, shall be included in determining the total assets of a person.

[43 FR 33537, July 31, 1978, as amended at 48 FR 34429, July 29, 1983]

§ 801.12 Calculating percentage of voting securities or assets.

(a) *Voting securities.* Whenever the act or these rules require calculation of the percentage of voting securities

to be held or acquired, the issuer whose voting securities are being acquired shall be deemed the "acquired persons."

Example: Person "A" is composed of corporation A1 and subsidiary A2; person "B" is composed of corporation B1 and subsidiary B2. Assume that A2 proposes to sell assets to B1 in exchange for common stock of B2. Under this paragraph, for purposes of calculating the percentage of voting securities to be held, the "acquired person" is B2. For all other purposes, the acquired person is "B." (For all purposes, the "acquiring persons" are "A" and "B.")

(b) *Percentage of voting securities.*

(1) Whenever the act or these rules require calculation of the percentage of voting securities of an issuer to be held or acquired, the percentage shall be the ratio, expressed as a percentage, which—

(i) The number of votes for directors of the issuer which voting securities presently entitle the holder to cast, or, as a result of the acquisition, will entitle the acquiring person to cast, bears to

(ii) The total number of votes for directors of the issuer which presently may be cast, or which will be entitled to be cast, after the acquisition, whichever is greater.

(2) Authorized but unissued voting securities and treasury voting securities shall not be considered securities presently entitled to vote for directors of the issuer.

(3) For purposes of determining the number of outstanding voting securities of an issuer, a person may rely upon the most recent information set forth in filings with the U.S. Securities and Exchange Commission, unless such person knows or has reason to believe that the information contained therein is inaccurate.

Examples: 1. In the example to paragraph (a), to determine the percentage of B2's voting securities which will be held by "A" after the transaction, all voting securities of B2 held by "A," the "acquiring person" (including A2 and all other entities included in person "A"), must be aggregated. If "A" holds convertible securities of B2 which meet the definition of voting securities in § 801.1(f), these securities are to be disregarded in calculating the percentage of voting securities held by "A."

2. Under this formula, any votes obtained by means of proxies from other persons are also disregarded in calculating the percentage of voting securities to be held or acquired.

(c) *Assets.* Any person whose assets are being acquired shall be deemed an "acquired person" in calculating the percentage of assets to be held or acquired for purposes of section 7A(a)(3)(A).

Example: In the example to paragraph (a), for purposes of calculating the percentage of assets to be held, the "acquired person" is "A."

(d) *Percentage of assets.* Whenever the act or these rules require calculation of the percentage of assets of a person to be held or acquired, the percentage shall be the ratio, expressed as a percentage, which—

(1) The book value (on the books of the acquired person) of the assets to be acquired (see § 801.13(b)(1)), bears to

(2) The total assets of the acquired person, determined in accordance with § 801.11.

Example: In the example to paragraph (a), the percentage of assets to be acquired by "B" is determined by dividing the book value of A2's assets being acquired, by the total assets of "A," determined in accordance with § 801.11.

[43 FR 33537, July 31, 1978; 43 FR 36054, Aug. 15, 1978]

§ 801.13 Voting securities or assets to be held as a result of acquisition.

(a) *Voting securities.* (1) Subject to the provisions of § 801.15, all voting securities of the issuer which will be held by the acquiring person after the consummation of an acquisition shall be deemed voting securities held as a result of the acquisition. The value of such voting securities shall be the sum of the value of the voting securities to be acquired, determined in accordance with § 801.10(a), and the value of the voting securities held by the acquiring person prior to the acquisition, determined in accordance with paragraph (a)(2) of this section.

(2) The value of voting securities of an issuer held prior to an acquisition shall be—

(i) If the security is traded on a national securities exchange or is author-

ized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission, the market price calculated in accordance with § 801.10(c)(1); or

(ii) If paragraph (a)(2)(i) of this section is not applicable, the fair market value determined in accordance with § 801.10(c)(3).

Examples: 1. Assume that acquiring person "A" holds \$19 million of the voting securities of X, and is to acquire another \$1 million of the same voting securities. Since under paragraph (a) of this rule all voting securities "A" will hold after the acquisition are held "as a result of" the acquisition, "A" will hold \$20 million of the voting securities of X as a result of the acquisition. "A" must therefore observe the requirements of the act before making the acquisition, unless the present acquisition is exempt under section 7A(c), § 802.21 or any other rule.

2. See § 801.15 and the examples to that rule.

3. See § 801.20 and the examples to that rule.

(b) *Assets.* (1) All assets to be acquired from the acquired person shall be assets held as a result of the acquisition. The value of such assets shall be determined in accordance with § 801.10(b).

(2)(i) If the acquiring person has signed a letter of intent or entered into a contract or agreement in principle to acquire assets from the acquired person, and

(ii) Subject to the provisions of § 801.15, if the acquiring person has acquired any assets from the acquired person within the 180 calendar days preceding the signing of such agreement and such assets are presently held by the acquiring person, then only for purposes of section 7A(a)(3)(B) and § 801.1(h)(1), both the acquiring and the acquired persons shall treat such assets as though they had not previously been acquired and are being acquired as part of the present acquisition. The value of any assets previously acquired which are subject to this paragraph shall be determined in accordance with § 801.10(b) as of the time of their prior acquisition.

Example: Acquiring person "A" proposes to make two acquisitions of assets from acquired person "B," 90 days apart, and wishes to determine whether notification is necessary prior to the second acquisition. For purposes of the percentage test of section 7A(a)(3)(A), "A" would hold only the assets it acquired in the second acquisition. For purposes of the \$15 million test of section 7A(a)(3)(B), however, "A" must aggregate both of its acquisitions and must value each as of the time of its occurrence.

§ 801.14 Aggregate total amount of voting securities and assets.

For purposes of section 7A(a)(3)(B) and § 801.1(h)(1), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(a); and

(b) The value of all assets of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(b).

Examples: 1. Acquiring person "A" previously acquired \$6 million of the voting securities (not convertible voting securities) of corporation X. "A" now intends to acquire \$8 million of X's assets. Under paragraph (a) of this section, "A" looks to § 801.13(a) and determines that the voting securities are to be held "as a result of" the acquisition. Section 801.13(a) also provides that "A" must determine the present value of the previously acquired securities. Under paragraph (b) of this section "A" looks to § 801.13(b)(1) and determines that the assets to be acquired will be held "as a result of" the acquisition, and are valued under § 801.10(b) at \$8 million. Therefore, if the voting securities have a present value of more than \$7 million, the asset acquisition is subject to the requirements of the act since, as a result of it, "A" would hold an aggregate total amount of the voting securities and assets of "X" in excess of \$15 million.

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. "A" now looks to § 801.13(b)(2) and determines that because the second acquisition is of voting securities and not assets, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act by reason of section 7A(a)(3)(B) since the value

of the securities to be acquired does not equal or exceed \$15 million.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of section 7A(a)(3) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.6(b)(1), 802.8, 802.31, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(11)(A) unless additional voting securities of the same issuer have been or are being acquired.

Examples: 1. Assume that acquiring person "A" is simultaneously to acquire \$50 million of the convertible voting securities of X and \$12 million (which is less than 15 percent) of the voting common stock of X. Although the acquisition of the convertible voting securities is exempt under § 802.31, since the overall value of the securities to be acquired is greater than \$15 million, "A" must determine whether it is obliged to file notification and observe a waiting period before acquiring the common stock. Because § 802.31 is one of the exemptions listed in paragraph (a)(2) of this rule, "A" would not hold the convertible voting securities as a result of the acquisition. Therefore, since as

a result of the acquisition "A" would hold only the common stock, the test of section 7A(a)(3) would not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock.

(Note, however, that the \$50 million of convertible voting securities would be reflected in "A's" next regularly prepared balance sheet, for purposes of § 801.11.)

2. In the previous example, the rule was applied to voting securities the present acquisition of which is exempt. Assume instead that "A" had acquired the convertible voting securities prior to its acquisition of the common stock. "A" still would not hold the convertible voting securities as a result of the acquisition of the common stock, because the rule states that voting securities the previous acquisition of which was exempt also fall within the rule. Thus, the test of section 7A(a)(3) would again not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock.

3. In example 2, assume instead that "A" acquired the convertible voting securities in 1975, before the act and rules went into effect. Since the rule applies to voting securities the acquisition of which would have been exempt had the act and rules been in effect, the result again would be identical. If the rules had been in effect in 1975, the acquisition of the convertible voting securities would have been exempt under § 802.31.

4. Assume that acquiring person "B," a United States person, acquired from corporation X two mines located abroad, and assume that the acquisition price was \$40 million. In the most recent year, sales in the United States attributable to the mines were \$6 million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, "B" seeks to acquire a third mine from X, to which United States sales of \$7 million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, "B" would hold all three mines of X, and the \$10 million limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, "B" would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, "B" would hold assets of X exceeding \$15 million, would not qualify for the exemption in § 802.50(a)(2), and must observe the requirements of the act before consummating the acquisition.

[43 FR 33537, July 31, 1978, as amended at 48 FR 34435, July 29, 1983]

§ 801.20 Acquisitions subsequent to exceeding threshold.

Acquisitions meeting the criteria of section 7A(a), and not otherwise ex-

empted by section 7A(c) or § 802.21 or any other of these rules, are subject to the requirements of the act even though:

(a) Earlier acquisitions of assets or voting securities may have been subject to the requirements of the act;

(b) The acquiring person's holdings initially may have met or exceeded a notification threshold before the effective date of these rules; or

(c) The acquiring person's holdings initially may have met or exceeded a notification threshold by reason of increases in market values or events other than acquisitions.

Examples: 1. Person "A" acquires \$10 million of the voting securities of person "B" before the effective date of these rules. If "A" wishes to acquire an additional \$6 million of the voting securities of "B" after the effective date of the rules, notification will be required by reason of section 7A(a)(3)(B).

2. In example 1, assume that the value of the voting securities of "B" originally acquired by "A" has reached a present value exceeding \$15 million. If "A" wishes to acquire an additional \$3 million of voting securities or assets of "B," notification will be required. See § 801.13(a).

§ 801.21 Securities and cash not considered assets when acquired.

For purposes of section 7A(a)(3) and §§ 801.1(h)(1), 801.12(d)(1) and 801.13(b):

(a) Cash shall not be considered an asset of the person from which it is acquired; and

(b) Neither voting or nonvoting securities nor obligations referred to in section 7A(c)(2) shall be considered assets of another person from which they are acquired.

Examples: 1. Assume that acquiring person "A" acquires voting securities of issuer X from "B," a person unrelated to X. Under this paragraph, the acquisition is treated only as one of voting securities, requiring "A" and "X" to comply with the requirements of the act, rather than one in which "A" acquires the assets of "B," requiring "A" and "B" to comply. See also example 2 to § 801.30. Note that for purposes of section 7A(a)(2)—that is, for the next regularly prepared balance sheet of "A" referred to in § 801.11—the voting securities of X must be reflected after their acquisition; see § 801.11(c)(2).

2. In the previous example, if "A" acquires nonvoting securities of X from "B," then

under this section the acquisition would be treated only as one of nonvoting securities of X (and would be exempt under section 7A(c)(2)), rather than one in which "A" acquires assets of "B," requiring "A" and "B" to comply. Again, the nonvoting securities of X would have to be reflected in "A's" next regularly prepared balance sheet for purposes of section 7A(a)(2).

3. In example 1, assume that "B" receives only cash from "A" in exchange for the voting securities of X. Under this section, "B's" acquisition of cash is *not* an acquisition of the "assets" of "A," and "B" is not required to file notification as an acquiring person.

§ 801.30 Tender offers and acquisitions of voting securities from third parties.

(a) This section applies to:

(1) Acquisitions on a national securities exchange or through an inter-dealer quotation system registered with the United States Securities and Exchange Commission;

(2) Acquisitions described by § 801.31;

(3) Tender offers;

(4) Secondary acquisitions;

(5) All acquisitions (other than mergers and consolidations) in which voting securities are to be acquired from a holder or holders other than the issuer or an entity included within the same person as the issuer;

(6) Conversions; and

(7) Acquisitions of voting securities resulting from the exercise of options or warrants which are—

(i) Issued by the issuer whose voting securities are to be acquired (or by any entity included within the same person as the issuer); and

(ii) The subject of a currently effective registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933.

(b) For acquisitions described by paragraph (a) of this section:

(1) The waiting period required under the act shall commence upon the filing of notification by the acquiring person as provided in § 803.10(a); and

(2) The acquired person shall file the notification required by the act, in accordance with these rules, no later than 5 p.m. eastern time on the 15th (or, in the case of cash tender offers, the 10th) calendar day following the

date of receipt, as defined by § 803.10(a), by the Federal Trade Commission and Assistant Attorney General of the notification filed by the acquiring person. Should the 15th (or, in the case of cash tender offers, the 10th) calendar day fall on a weekend day or federal holiday, the notification shall be filed no later than 10 a.m. eastern time on the next following business day.

Examples: 1. Acquiring person "A" proposes to acquire from corporation B the voting securities of B's wholly owned subsidiary, corporation S. Since "A" is acquiring the shares of S from its parent, this section does not apply, and the waiting period does not begin until both "A" and "B" file notification.

2. Acquiring person "A" proposes to acquire \$20 million of the voting securities of corporation X on a securities exchange. The waiting period begins when "A" files notification. "X" must file notification within 15 calendar days thereafter. The seller of the X shares is not subject to any obligations under the act.

3. Suppose that acquiring person "A" proposes to acquire 50 percent of the voting securities of corporation B which in turn owns 30 percent of the voting securities of corporation C. Thus "A's" acquisition of C's voting securities is a secondary acquisition (see § 801.4) to which this section applies because "A" is acquiring C's voting securities from a third party (B). Therefore, the waiting period with respect to "A's" acquisition of C's voting securities begins when "A" files its separate Notification and Report Form with respect to C, and "C" must file with 15 days thereafter. "A's" primary and secondary acquisitions of the voting securities of B and C are subject to separate waiting periods; see § 801.4.

[43 FR 33537, July 31, 1978; 43 FR 36054, Aug. 15, 1978]

§ 801.31 Acquisitions of voting securities by offerees in tender offers.

Whenever an offeree in a noncash tender offer is required to, and does, file notification with respect to an acquisition described in § 801.2(e):

(a) The waiting period with respect to such acquisition shall begin upon filing of notification by the offeree, pursuant to §§ 801.30 and 803.10(a)(1);

(b) The person within which the issuer of the shares to be acquired by the offeree is included shall file notification as required by § 801.30(b);

(c) Any request for additional information or documentary material pursuant to section 7A(e) and § 803.20 shall extend the waiting period in accordance with § 803.20(c); and

(d) The voting securities to be acquired by the offeree may be placed into escrow, for the benefit of the offeree, pending expiration or termination of the waiting period with respect to the acquisition of such securities; *Provided however*, That no person may vote any voting securities placed into escrow pursuant to this paragraph.

Example: Assume that "A," which has annual net sales exceeding \$100 million, makes a tender offer for voting securities of corporation X. The consideration for the tender offer is to be voting securities of A. "S," a shareholder of X with total assets exceeding \$10 million, wishes to tender its holdings of X and in exchange would receive shares of A valued at \$16 million. Under this section, "S's" acquisition of the shares of A would be an acquisition separately subject to the requirements of the act. Before "S" may acquire the voting securities of A, "S" must first file notification and observe a waiting period—which is separate from any waiting period that may apply with respect to "A" and "X." Since § 801.30 applies, the waiting period applicable to "A" and "S" begins upon filing by "S," and "A" must file with respect to "S's" acquisition within 15 days pursuant to § 801.30(b). Should the waiting period with respect to "A" and "X" expire or be terminated prior to the waiting period with respect to "S" and "A," "S" may wish to tender its X-shares and place the A-shares into a nonvoting escrow until the expiration or termination of the latter waiting period.

§ 801.32 Conversion an acquisition.

A conversion is an acquisition within the meaning of the act.

Example: Assume that acquiring person "A" wishes to convert convertible voting securities of issuer X, and is to receive common stock of X valued at \$20 million. If "A" and "X" satisfy the criteria of section 7A(a)(1) and section 7A(a)(2), then "A" and "X" must file notification and observe the waiting period before "A" completes the acquisition of the X common stock, unless exempted by section 7A(c) or these rules. Since § 801.30 applies, the waiting period begins upon notification by "A" and "X" must file notification within 15 days.

§ 801.33 Consummation of an acquisition by acceptance of tendered shares of payment.

The acceptance for payment of any shares tendered in a tender offer is the consummation of an acquisition of those shares within the meaning of the act.

[48 FR 34433, July 29, 1983]

§ 801.40 Formation of joint venture or other corporations.

(a) In the formation of a joint venture or other corporation (other than in connection with a merger or consolidation), even though the persons contributing to the formation of a joint venture or other corporation and the joint venture or other corporation itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of § 801.2, the contributors shall be deemed acquiring persons only, and the joint venture or other corporation shall be deemed the acquired person only.

(b) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of section 7A (a) (1) and (3) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act if:

(1)(i) The acquiring person has annual net sales or total assets of \$100 million or more;

(ii) The joint venture or other corporation will have total assets of \$10 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of \$10 million or more; or

(2)(i) The acquiring person has annual net sales or total assets of \$10 million or more;

(ii) The joint venture or other corporation will have total assets of \$10 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of \$10 million or more.

(c) For purposes of paragraph (b) of this section and determining whether any exemptions provided by the act and these rules apply to its formation,

the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the act; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

(d) The commerce criterion of section 7A(a)(1) is satisfied if either the activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the activities of the joint venture or other corporation will be in or will affect commerce.

Example: Persons "A," "B," and "C" agree to create new corporation N, a joint venture.

"A" has more than \$100 million in annual net sales. "B" has more than \$10 million in total assets. Both "C"'s total assets and its annual net sales are less than \$10 million. "A," "B," and "C" are each engaged in commerce. The corporations have agreed to make an aggregate initial contribution to the new entity of \$6 million in assets and to make additional contributions of an aggregate \$6 million in each of the next three years. Under paragraph (c), the assets of the new corporation are \$24 million. Under paragraph (b), only "A" must file notification, and only then if "A" meets a criterion of section 7A(a)(3)—that is, if it will be acquiring 15 percent or \$15 million of the voting securities of the new entity. N need not file notification, see § 802.41.

43 FR 33537, July 31, 1978, as amended at 48 FR 34434, July 29, 1983)

§ 801.90 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding the obligation to comply with the requirements of the act shall be disregarded, and the obligation to comply shall be determined by applying the act and these rules to the substance of the transaction.

Examples. 1. Suppose corporations A and B wish to form a joint venture. A and B contemplate a total investment of \$30 million in the joint venture, persons "A" and "B" each

have total assets in excess of \$100 million. Instead of filing notification pursuant to § 801.40, A creates a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of \$1,000. "A" then sells 50 percent of its A1 stock to "B" for \$500. Thereafter, "A" and "B" each contribute \$15 million to A1 in exchange for the remaining authorized A1 stock (one-fourth each to "A" and "B"). A's creation of A1 was exempt under § 802.30, its sale of A1 stock to "B" was exempt under § 802.20; and the second acquisition of stock in A1 by "A" and "B" was exempt under § 802.30 and sections 7A(c) (3) and (10). Since this scheme appears to be for the purpose of avoiding the requirements of the act, the sequence of transactions will be disregarded. The transactions will be viewed as the formation of a joint venture corporation by "A" and "B" having over \$10 million in assets. Such a transaction would be covered by § 801.40 and "A" and "B" must file notification and observe the waiting period.

2. Suppose "A" wholly owns and operates a chain of twenty retail hardware stores, each of which is separately incorporated and has assets of less than \$10 million. The aggregate fair market value of the assets of the twenty store corporations is \$60 million.

"A" proposes to sell the stores to "B" for \$60 million. For various reasons it is decided that "B" will buy the stock of each of the store corporations from "A". Instead of filing notification and observing the waiting period as contemplated by the act, "A" and

"B" enter into a series of five stock purchase-sale agreements for \$12 million each. Under the terms of each contract the stock of four stores will pass from "A" to "B". The five agreements are to be consummated on five successive days. Because, after each of these transactions, the store corporations are no longer part of the acquired person (§ 801.13(a) does not apply because control has passed, see § 801.2), and because § 802.20(b) exempts the acquisition of control of each of the store corporations, none of the contemplated acquisitions would be subject to the requirements of the act. However, if the stock of all of the store corporations were to be purchased in one transaction, no exemption would be applicable and the act's requirements would have to be met. Because it appears that the purpose of making five separate contracts is to avoid the requirements of the act, this section would ignore the form of the separate transactions and consider the substance to be one transaction requiring compliance with the act.

PART 802—EXEMPTION RULES

Sec.

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- 802.53 Certain foreign banking transactions.
- 802.60 Acquisitions by securities underwriters.
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- 802.64 Acquisitions of voting securities by certain institutional investors.
- 802.70 Acquisitions subject to order.
- 802.71 Acquisitions by gift, intestate succession or devise, or by irrevocable trust.

AUTHORITY: See 7A(d), Clayton Act, 15 U.S.C. 18A(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390.

SOURCE: 43 FR 33544, July 31, 1978, unless otherwise noted.

§ 802.1 Acquisitions of goods or realty in the ordinary course of business.

(a) *Acquisitions of voting securities of entities holding only realty.* For purposes of section 7A(c)(1), an acquisition of the voting securities of an entity whose assets consist or will consist solely of real property and assets incidental to the ownership of real property (such as cash, prepaid taxes or insurance, rentals receivable and the like) shall be deemed an acquisition of realty.

(b) *Certain acquisitions of assets.* No acquisition of the goods or realty of an entity (except for entities described in paragraph (a) of this section) shall be made "in the ordinary course of business" within the meaning of section 7A(c)(1), if, as a result thereof, the acquiring person will hold all or substantially all of the assets of that entity or an operating division thereof.

§ 802.6 Federal agency approval.

(a) For the purposes of section 7A(c)(6) and (c)(8), the term "information and documentary material" includes one copy of all documents, application forms, and all written submissions of any type whatsoever. In lieu of providing all such information and documentary material, or any portion thereof, one copy of an index describing such information and documentary material may be provided, together with a certification that any such information or documentary material not provided will be provided within 10 calendar days upon request by the Federal Trade Commission or Assistant Attorney General, or a delegated official of either. Any material submitted pursuant to this section shall be submitted to the offices specified in § 803.10(c).

(b)(1) Except as provided in § 802.6(b)(2), any transaction which requires approval by the Civil Aeronautics Board prior to consummation, pursuant to section 408 of the Federal Aviation Act, 49 U.S.C. 1378, shall be exempt from the requirements of the act if copies of all information and documentary material filed with the Civil Aeronautics Board are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General.

(2) The following will be considered assets held as a result of an acquisition requiring approval by the Civil Aeronautics Board pursuant to section 408 of the Federal Aviation Act, and such assets will not be exempt under § 802.6(b)(1):

(i) If the transaction is an acquisition of assets, the assets which are engaged in a business or businesses other than aeronautics or air transportation

as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301.

(1) If the transaction is an acquisition of voting securities, or is treated under the rules as an acquisition of voting securities, and the acquiring person will, as a result of the acquisition, hold voting securities of the acquired person valued in excess of \$15 million, the business or businesses of the acquired issuer (and all entities which it controls) which are not engaged in aeronautics or air transportation as defined in section 101 of the Federal Aviation Act, 49 U.S.C. 1301.

Example: Assume that A (an entity included within person "A") proposes to acquire voting securities of B (an entity included within person "B") for \$100 million. A and B are both air carriers who meet the size-of-person test, but B also owns a commercial data processing business located in the United States with a value of \$30 million. Assume that this transaction requires CAB approval under 49 U.S.C. 1378. Since the acquired person (as a business other than aeronautics or air transportation, the parties must report under § 802.6(b)(2) because the parties meet the size-of-person test, no other exemption applies to the acquisition of the data processing business, and the acquisition of the non-aeronautic business is deemed to be an acquisition of assets valued at \$30 million.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34435, July 29, 1983]

§ 802.8 Certain supervisory acquisitions.

(a) A merger, consolidation, purchase of assets, or acquisition requiring agency approval under sections 403 or 408(e) of the National Housing Act, 12 U.S.C. 1726, 1730a(e), or under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 shall be exempt from the requirements of the Act, including specifically the filing requirement of section 7A(c)(8), if the agency whose approval is required finds that approval of such merger, consolidation, purchase of assets, or acquisition is necessary to prevent the probable failure of one of the institutions involved.

(b)(1) A merger, consolidation, purchase of assets, or acquisition which requires agency approval under 12 U.S.C. 1817(j) or 12 U.S.C. 1730(q) shall be exempt from the requirements of the act if copies of all infor-

mation and documentary materials filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed acquisition.

(2) A transaction described in paragraph (b)(1) of this section shall be exempt from the requirements of the act, including specifically the filing requirement, if the agency whose approval is required finds that approval of such transaction is necessary to prevent the probable failure of one of the institutions involved.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34436, July 29, 1983]

§ 802.9 Acquisition solely for the purpose of investment.

An acquisition of voting securities shall be exempt from the requirements of the act pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held.

Examples: 1. Suppose that acquiring person "A" acquires 6 percent of the voting securities of issuer X, valued at \$30 million. If the acquisition is solely for the purpose of investment, it is exempt under section 7A(c)(9).

2. After the acquisition in example 1, "A" decides to acquire an additional 7 percent of the voting securities of X. Regardless of "A's" intentions, the acquisition is not exempt under section 7A(c)(9).

3. After the acquisition in example 1, acquiring person "A" decides to participate in the management of issuer X. Any subsequent acquisitions of X stock by "A" would not be exempt under section 7A(c)(9).

§ 802.10 Stock dividends and splits.

The acquisition of voting securities, pursuant to a stock split or pro rata stock dividend, shall be exempt from the requirements of the act under section 7A(c)(10).

§ 802.20 Minimum dollar value.

An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A), but

which does not satisfy section 7A(a)(3)(B), shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:

- (a) Assets of the acquired person valued at more than \$15 million; or
- (b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of \$25 million or more.

Examples. 1. Acquiring person A intends to acquire 66 percent of the voting securities of corporation X from X's ultimate parent entity W and A holds no other assets or voting securities of acquired persons. W, X has no subsidiaries and does not have annual net sales or total assets of \$10 million. If the postacquisition value of A's holdings of voting securities of X would be \$15 million or less, the acquisition would be exempt under this section.

2. Assume that acquiring person B holds voting securities of corporation Q valued at \$8 million. B now intends to acquire assets of Q valued at \$7 million. Since the aggregate total amount of voting securities and assets of Q to be held by B would exceed \$15 million, section 7A(a)(2)(B) would be satisfied, and the acquisition would not be exempt under this section.

3. Assume that acquiring person C holds \$5 million of the voting securities of corporation R, an entity included within person T. C now proposes to acquire \$8 million of the assets of corporation S, also an entity included within person T, representing 20 percent of T's total assets. Section 7A(a)(2)(B) is not satisfied because the aggregate total amount of C's holdings in acquired person T will be less than \$15 million. Although section 7A(a)(2)(A) would be satisfied by the asset acquisition, it will nevertheless be exempt under paragraph (a) of this section.

[41 FR 33544, July 31, 1976, as amended at 44 FR 66782, Nov. 21, 1979.]

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

An acquisition of voting securities shall be exempt from the requirements of the act if:

- (a) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

- (b) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

- (c) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

Examples. 1. Corporation A acquires 15 percent of the voting securities of corporation B and both A and B file notification as required. Within five years of the expiration of the original waiting period, A acquires additional voting securities of B but not in an amount sufficient to meet or exceed 25 percent of the voting securities of B. No additional notification is required.

2. In example 1, A continues to acquire B's securities. Before A's holdings meet or exceed 25 percent of B's outstanding voting securities, A and B meet the notification and wait the prescribed period. Based on whether the acquisition occurs within six years after the expiration of the earlier waiting period.

3. In example 2, suppose that A and B file notification at the 25 percent level and that, within 5 years after expiration of the waiting period, A continues to acquire voting securities of B. No further notification is required until A plans to make the acquisition that will give it 50 percent ownership of B. Once A holds 50 percent, further acquisitions of voting securities are exempt under section 7A(c)(3).

4. Assume that C is an institutional investor whose prior acquisitions of corporation D's voting securities were exempt under § 802.64. C now proposes to purchase additional voting securities of D which will result in holdings exceeding 15 percent and \$25 million. C and D therefore file notification and observe the waiting period. Under this section, within the 5 years following the expiration of the waiting period, C may further increase its holdings in D to any amount below 25 percent, regardless of dollar value, without again filing notification. Section 802.64 exempted C from filing notification at the threshold defined in subparagraphs (1) or (2) of § 801.1(b), thereafter, since C filed notification with respect to an acquisition which resulted in its holding more than 15 percent of D's voting securities valued at more than \$25 million, the next notification threshold greater than the greatest notification threshold met in the earlier acquisition is 25 percent of D's voting securities.

ties. (See paragraph (c) of this section and § 803.10(b)(3).)

5. This section also allows a person to re-cross any of the threshold notification levels—15 percent \$15 million, 15 percent if greater than \$15 million, 25 and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. Thus, if in example 1, "A" had disposed of some voting securities so that it held less than 15 percent of the voting securities of B, and thereafter had increased its holdings to more than 15 percent but less than 25 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period. Similarly, in examples 2 and 3, "A" could decrease its holdings below, and then increase its holdings above, 25 percent and 50 percent, respectively without filing notification, if done within 5 years of the expiration of those respective waiting periods.

§ 802.23 Amended or renewed tender offers.

Whenever a tender offer is amended or renewed after notification has been filed by the offeror, no new notification shall be required, and the running of the waiting period shall be unaffected, except as follows:

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day

after the date of receipt (as determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

Examples: 1. Assume that corporation A makes a tender offer for 20 percent of the voting securities of corporation B and that "A" files notification. Under this section, if A subsequently amends its tender offer only as to the amount of consideration offered, the waiting period so commenced is not affected, and no new notification need be filed.

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B. Since a new notification threshold will be crossed, this section requires that "A" must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that "B" need not file notification again.

3. Assume that "A" makes a tender offer for shares of corporation B. "A" includes its voting securities as part of the consideration. "A" files notification. Five days later, "A" changes its tender offer to a cash tender offer, and on the same day files copies of its amended tender offer with the offices designated in § 803.10(c). Under paragraph (b) of this section, the waiting period expires (unless extended or terminated) 15 days after the receipt of the amended offer (on the 20th day after filing notification), since that occurs earlier than the expiration of the original waiting period (which would occur on the 30th day after filing).

4. Assume that "A" makes a cash tender offer for shares of corporation B and files notification. Six days later, "A" amends the tender offer and adds voting securities as consideration, and on the same day files copies of the amended tender offer with the offices designated in § 803.10(c). Under paragraph (c) of this section, the waiting period expires (unless extended or terminated) on the 30th day following the date of filing of notification (determined under § 803.10(c)), since that occurs later than the 15th day after receipt of the amended tender offer (which would occur on the 21st day).

[43 FR 33544, July 31, 1978; 43 FR 36054, Aug. 15, 1978]

§ 802.30 Intraperson transactions.

An acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which, by reason of holdings of voting securities, the acquiring and acquired persons are (or as a result of forma-

tion of a wholly owned entity will be the same person, shall be exempt from the requirements of the act.

Examples: 1. Corporation A merges its two wholly owned subsidiaries S1 and S2. The transaction is exempt under this section.

2. Corporation B creates a new wholly owned subsidiary. The transaction is exempt under this section.

3. Corporation A, which controls corporation B by a contract giving A the power to name a majority of B's directors, but which holds no voting securities of B, proposes to acquire 15 percent of B's voting securities. The transaction is not exempt under this section since A and B are not the same person, by reason of holdings of voting securities.

4. Corporation A repurchases a portion of its voting securities in a series of transactions involving numerous sellers. All of these acquisitions are exempt under this section. The redemption or retirement of securities would likewise be exempt under this section.

5. Corporations A and B (which are not included within the same person) form a new corporation, C. A and B will each hold C's voting securities upon formation. This section is inapplicable, and the acquisitions of C's voting securities by A and B are not exempt.

§ 802.31 Acquisitions of convertible voting securities.

Acquisitions of convertible voting securities shall be exempt from the requirements of the act.

Example: This section applies regardless of the dollar value of the convertible voting securities held or to be acquired and even though they may be converted into 15 percent or more of the issuer's voting securities. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See § 801.32.

§ 802.40 Exempt formation of joint venture or other corporations.

Acquisitions of the voting securities of a joint venture or other corporation at the time of formation under § 801.40 shall be exempt from the requirements of the act if the joint venture or other corporation will be not for profit within the meaning of sections 501(c)(1)-(4), (6)-(15), (17)-(20) or (d) of the Internal Revenue Code.

§ 802.41 Joint venture or other corporations at time of formation.

Whenever any person(s) contributing to the formation of a joint venture or other corporation are subject to the requirements of the act by reason of § 801.40, the joint venture or other corporation need not file the notification required by the act and § 803.1.

Examples: 1. Corporations A and B, each having sales of \$100 million, each propose to contribute \$10 million in cash in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification, although both A and B must do so and observe the waiting period prior to receiving any voting securities of N.

2. In addition to the facts in example 1 above, A and B have agreed that upon creation N will purchase 100 percent of the voting securities of corporation C for \$15 million. Because N's purchase of C is not a transaction in connection with N's formation, and because in any event C is not a contributor to the formation of N, A, B, and C must file with respect to the proposed acquisition of C and must observe the waiting period.

§ 802.42 Partial exemption for acquisitions in connection with the formation of certain joint ventures or other corporations.

(a) Whenever one or more of the contributors in the formation of a joint venture or other corporation which otherwise would be subject to the requirements of the act by reason of § 801.40 are exempt from these requirements under section 7A(c)(8), any other contributor in the formation which is subject to the act and not exempt under section 7A(c)(8) need not file a Notification and Report Form, provided that no less than 30 days prior to the date of consummation any such contributor claiming this exemption has submitted an affidavit to the Federal Trade Commission and to the Assistant Attorney General stating its good faith intention to make the proposed acquisition and asserting the applicability of this exemption.

(b) Persons relieved of the requirement to file a Notification and Report Form pursuant to paragraph (a) of this section remain subject to all other provisions of the act and these rules.

148 FR 34436, July 29, 1983]

§ 802.50 Acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons.

(a) *Assets.* In a transaction in which assets located outside the United States are being acquired by a U.S. person:

(1) The acquisition of assets located outside the United States, to which no sales in or into the United States are attributable, shall be exempt from the requirements of the act; and

(2) The acquisition of assets located outside the United States, to which sales in or into the United States are attributable, shall be exempt from the requirements of the act unless as a result of the acquisition the acquiring person would hold assets of the acquired person to which such sales aggregating \$25 million or more during the acquired person's most recent fiscal year were attributable.

Examples: 1. Assume that "A" and "B" are both U.S. persons. "A" proposes selling to "B" a manufacturing plant located abroad. Sales in or into the United States attributable to the plant totaled \$8 million in the most recent fiscal year. The transaction is exempt under this paragraph.

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad, sales in or into the United States attributable to this plant totaled \$20 million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" now held by "B". See § 801.13(b)(2). Since the total annual sales in or into the United States exceed \$215 million, the acquisition of the second plant would not be exempt under this paragraph.

(b) *Voting securities.* An acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either:

(1) Holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) having an aggregate book value of \$15 million or more; or

(2) Made aggregate sales in or into the United States of \$25 million or more in its most recent fiscal year.

Example: "A," a U.S. person, is to acquire the voting securities of "C," a foreign issuer. "C" has no assets in the United States, but made aggregate sales into the United States of \$27 million in the most recent fiscal year. The transaction is not exempt under this section.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34437, July 29, 1983]

§ 802.51 Acquisitions by foreign persons.

An acquisition by a foreign person shall be exempt from the requirements of the act if:

(a) The acquisition is of assets located outside the United States;

(b) The acquisition is of voting securities of a foreign issuer, and will not confer control of:

(1) An issuer which holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) having an aggregate book value of \$15 million or more; or

(2) A U.S. issuer with annual net sales or total assets of \$25 million or more;

(c) The acquisition is of less than \$15 million of assets located in the United States (other than investment assets); or

(d) The acquired person is also a foreign person, the aggregate annual sales of the acquiring and acquired persons in or into the United States are less than \$110 million, and the aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(c)(2)) are less than \$110 million.

Examples: 1. Assume that "A" and "B" are foreign persons with aggregate annual sales in or into the United States of \$200 million. If "A" acquires the assets of "B," and if no assets in the United States or voting securities of U.S. issuers will be acquired, the transaction is exempt under paragraphs (a) and (c).

2. In example 1, assume that "A" is acquiring "B's" stock and that included within "B" is issuer "C," a U.S. issuer whose total

assets are valued at \$27 million. Since C's voting securities will be acquired indirectly, and since "A" thus will be acquiring control of a U.S. issuer with total assets of more than \$25 million, the acquisition cannot be exempt under this section.

3 In the previous examples, assume that "A" is a U.S. person. This section does not apply, since the acquiring person must be a foreign person.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34437, July 29, 1983]

§ 802.52 Acquisitions by or from foreign governmental corporations.

An acquisition shall be exempt from the requirements of the act if:

(a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and

(b) The acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state.

Example: The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is "A," a U.S. person. Regardless of the aggregate annual sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate annual sales were less than \$10 million, the transaction would also be exempt under § 802.50.)

§ 802.53 Certain foreign banking transactions.

An acquisition which requires the consent or approval of the Board of Governors of the Federal Reserve System under section 25 or section 25(a) of the Federal Reserve Act, 12 U.S.C. 601, 615, shall be exempt from the requirements of the act if copies of all information and documentary material filed with the Board of Governors are contemporaneously filed with the Federal Trade Commission and Assistant Attorney General at least 30 days prior to consummation of the acquisition. In lieu of such information and documentary material or any portion thereof, an index describing such material may be provided in the manner authorized by § 802.6(a).

[43 FR 33544, July 31, 1978, as amended at 48 FR 34435, July 29, 1983]

§ 802.60 Acquisitions by securities underwriters.

An acquisition of voting securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting, shall be exempt from the requirements of the act.

§ 802.63 Certain acquisitions by creditors and insurers.

a *Creditors.* An acquisition of collateral or receivables, or an acquisition in foreclosure, or upon default, or in connection with the establishment of a lease financing, or in connection with a bona fide debt work-out shall be exempt from the requirements of the act if made by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business.

(b) *Insurers.* An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations shall be exempt from the requirements of the act if made by an insurer in the ordinary course of business.

Examples: 1. A bank makes a loan and takes actual or constructive possession of collateral in any form. Since the bank is not the beneficial owner of the collateral, the bank's receipt of it is not an acquisition which is subject to the requirements of the act. However, if upon default the bank becomes the beneficial owner of the collateral, that acquisition is exempt under this section.

2. This section exempts only the acquisition by the creditor or insurer, and not the subsequent disposition of the assets or voting securities. If a creditor or insurer sells voting securities or assets that have come into its possession in a transaction which is exempt under this section, the requirements of the act may apply to that disposition.

§ 802.64 Acquisitions of voting securities by certain institutional investors.

(a) *Institutional investor.* For purposes of this section, the term "institutional investor" means any entity of the following type:

- (1) A bank within the meaning of 15 U.S.C. 80b-2(a)(2);
- (2) Savings bank;
- (3) Savings and loan or building and loan company or association;

(4) Trust company;

(5) Insurance company;

(6) Investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

(7) Finance company;

(8) Broker-dealer within the meaning of 15 U.S.C. 78c(a)(4) or (a)(5);

(9) Small Business Investment Company or Minority Enterprise Small Business Investment Company regulated by the U.S. Small Business Administration pursuant to 15 U.S.C. 662;

(10) A stock bonus, pension, or profit-sharing trust qualified under section 401 of the Internal Revenue Code;

(11) Bank holding company within the meaning of 12 U.S.C. 1841;

(12) An entity which is controlled directly or indirectly by an institutional investor and the activities of which are in the ordinary course of business of the institutional investor;

(13) An entity which may supply incidental services to entities which it controls directly or indirectly but which performs no operating functions, and which is otherwise engaged only in holding controlling interests in institutional investors; or

(14) A nonprofit entity within the meaning of sections 501(c)(1) through (4), (6) through (15), (17) through (20), or (d) of the Internal Revenue Code.

(b) *Exemption.* An acquisition of voting securities shall be exempt from the requirements of the act, except as provided in paragraph (c) of this section, if:

(1) Made directly by an institutional investor;

(2) Made in the ordinary course of business;

(3) Made solely for the purpose of investment;

(4) As a result of the acquisition the acquiring person would not control the issuer; and

(5) As a result of the acquisition the acquiring person would hold either:

(i) Fifteen percent or less of the outstanding voting securities of the issuer; or

(ii) Voting securities of the issuer valued at \$25 million or less.

(c) *Exception to exemption.* Notwithstanding paragraph (b) of this section:

(1) No acquisition of voting securities of an institutional investor of the same type as an entity included within the acquiring person shall be exempt under this section; and

(2) No acquisition by an institutional investor shall be exempt under this section if any entity included within the acquiring person which is not an institutional investor holds any voting securities of the issuer whose voting securities are to be acquired.

Examples: 1. Assume that A and its subsidiary, B, are both institutional investors as defined in paragraph (a) of this section, that X is not, and that the conditions set forth in subparagraphs (2), (3) and (4) of paragraph (b) of this section are satisfied. Either A or B may acquire voting securities of X worth in excess of \$25 million as long as the aggregate amount held by person "A" as a result of the acquisition does not equal or exceed 15 percent of X's outstanding voting securities. If the aggregate holdings would equal or exceed 15 percent, "A" may acquire no more than \$25 million worth of voting securities without being subject to the requirements of the act.

2. In example 1, assume that B plans to make the acquisition, but that corporation B's parent, corporation A, is not an institutional investor and is engaged in manufacturing. Subparagraph (2)(2) provides that acquisitions by B can never be exempt under this section if A owns any amount of X's voting securities.

3. In example 1, the exemption does not apply if X is also an institutional investor of the same type as either A or B.

4. Assume that H is a holding company which controls a life insurance company, a casualty insurer and a finance company. The life insurance company controls a data processing company which performs services for the two insurers. Any acquisition by any of these entities could qualify for exemption under this section.

5. In example 4, if H also controls a manufacturing entity, H is not an institutional investor, and only the acquisitions made by the two insurance companies, the finance company and the data processing company can qualify for the exemption under this section.

§ 802.70 Acquisitions subject to order.

An acquisition shall be exempt from the requirements of the act if:

(a) The voting securities or assets are to be acquired from an entity ordered to divest such voting securities

or assets by order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice; or

(b) The acquiring person or entity is subject to an order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice, requiring prior approval of such acquisition by the Federal Trade Commission, such court, or the Department of Justice, and such approval has been obtained.

[43 FR 33544, July 31, 1978, as amended at 48 FR 34438, July 29, 1983]

§ 802.71 Acquisitions by gift, intestate succession or devise, or by irrevocable trust.

Acquisitions resulting from a gift, intestate succession, testamentary disposition or transfer by a settlor to an irrevocable trust shall be exempt from the requirements of the act.

PART 803—TRANSMITTAL RULES

Sec.

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**APPENDIX—ANTITRUST IMPROVEMENTS ACT
NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS**

AUTHORITY: Sec. 7A(d), Clayton Act, 15 U.S.C. 18A(d), as added by sec. 201, Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

SOURCE: 43 FR 33548, July 31, 1978, unless otherwise noted.

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form set forth in the appendix to this Part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules. Copies of the Notification and Report Form may be obtained in person from the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C., or by writing to the Premerger Notification Office, Room 303, Federal Trade Commission, Washington, DC 20580.

(b) Any person filing notification may, in addition to the submissions required by this section, submit any other information or documentary material which such person believes will be helpful to the Federal Trade Commission and Assistant Attorney General in assessing the impact of the acquisition upon competition.

§ 803.2 Instructions applicable to Notification and Report Form.

(a) The notification required by the act shall be filed by the preacquisition ultimate parent entity, or by any entity included within the person authorized by such preacquisition ultimate parent entity to file notification on its behalf. In the case of a natural person required by the act to file notification, such notification may be filed by his or her legal representative: *Provided however*, That notwithstanding § 801.1(c)(2) and § 801.2, only one notification shall be filed by or on behalf of a natural person, spouse and minor children with respect to an acquisition as a result of which more than one such natural person will hold voting securities of the same issuer.

Example: Jane Doe, her husband and minor child collectively hold more than 50 percent of the shares of family corporation F. Therefore, Jane Doe (or her husband or minor child) is the "ultimate parent entity" of a "person" composed to herself (or her

husband or minor child) and F; see paragraphs (a)(3), (b) and (c)(2) of § 801.1. If corporation F is to acquire corporation X, under this paragraph only one notification is to be filed by Jane Doe, her husband and minor child collectively.

(b)(1) Except as provided in paragraph (b)(2) of this section and paragraph (c) of this section, items 5-9 and the appendix to the Notification and Report Form must be completed—

(i) By acquiring persons, with respect to all entities included within the acquiring person;

(ii) By acquired persons, in the case of an acquisition of assets, only with respect to the assets to be acquired;

(iii) By acquired persons, in the case of an acquisition of voting securities, with respect to only the issuer whose voting securities are being acquired, and all entities controlled by such issuer; and

(iv) By persons which are both acquiring and acquired persons, separately in the manner that would be required of acquiring and acquired persons under this paragraph, if different.

(2) For purposes of items 7-9 of the Notification and Report Form, the acquiring person shall regard the acquired person in the manner described in paragraphs (b)(1) (ii) and (iii) of this section.

Example: Person "A" is comprised of entities separately engaged in grocery retailing, auto rental, and coal mining. Person "B" is comprised of entities separately engaged in wholesale magazine distribution, auto rental and book publishing. "A" proposes to purchase 100 percent of the voting securities of "B"'s book publishing subsidiary. For purposes of item 5, under clause (b)(1)(i), "A" reports, the activities of all its entities; under clause (b)(1)(iii), "B" reports only the operations of its book publishing subsidiary. For purposes of items 7-9, under subparagraph (2) of this paragraph "A" must regard "B" as consisting only of its book publishing subsidiary, and must disregard the fact that "A" and "B" are both engaged in the auto rental business.

(c) In response to items 5, 7, 8, and 9 and the appendix to the Notification and Report Form—

(1) Information shall be supplied only with respect to operations conducted within the United States; and

(2) Information need not be supplied with respect to assets or voting securi-

ties to be acquired, the acquisition of which is exempt from the requirements of the act.

(d) The term "dollar revenues," as used in the Notification and Report Form, means value of shipments for manufacturing operations, and sales, receipts, revenues, or other appropriate dollar value measure for operations other than manufacturing, f.o.b. the plant or establishment less returns, after discounts and allowances and excluding freight charges and excise taxes. Dollar revenues including delivery may be supplied if delivery is an integral part of the sales price. Dollar revenues include interplant transfers.

(e) A person filing notification may incorporate by reference only documentary materials required to be filed in response to item 4(a) of the Notification and Report Form and annual reports required to be filed in response to item 4(b), which were previously submitted with a filing by the same person and which are the most recent versions available; except that when the same parties file for a higher notification threshold no more than 90 days after having made filings with respect to a lower threshold, each party may incorporate by reference in the subsequent filing any documents or information in its earlier filing provided that the documents and information are the most recent available.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34438, July 29, 1983]

§ 803.3 Statement of reasons for noncompliance.

A complete response shall be supplied to each item on the Notification and Report Form and to any request for additional information pursuant to section 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement of reasons for noncompliance. The statement of reasons for noncompliance shall contain all information upon which a person relies in explanation of its noncompliance and shall include at least the following:

(a) Why the person is unable to supply a complete response;

(b) What information, and what specific documents or categories of documents, would have been required for a complete response;

(c) Who, if anyone, has the required information, and specific documents or categories of documents; and a description of all efforts made to obtain such information and documents, including the names of persons who searched for required information and documents, and where the search was conducted. If no such efforts were made, provide an explanation of the reasons why, and a description of all efforts necessary to obtain required information and documents;

(d) Where noncompliance is based on a claim of privilege, a statement of the claim of privilege and all facts relied on in support thereof, including the identity of each document, its author, addressee, date, subject matter, all recipients of the original and of any copies, its present location, and who has control of it.

[48 FR 34439, July 29, 1983]

§ 803.4 Foreign persons refusing to file notification.

(a) In an acquisition to which § 801.30 does not apply, and in which no assets (other than investment assets) located in the United States and no voting securities of a United States issuer will be acquired directly or indirectly, if a foreign acquired person refuses to file notification, then any other person which is a party to the acquisition may file notification on behalf of the foreign person. Such notification shall constitute the notification required of the foreign person by the act and these rules.

(b) Any person filing on behalf of the foreign person pursuant to this section must state in the affidavit required by § 803.5(b) that such foreign person has refused to file notification and must explain all efforts made by the person filing on behalf of the foreign person to obtain compliance with the act and these rules by such foreign person.

(c) Any notification filed on behalf of a foreign person pursuant to this

section must contain all information and documentary material reasonably available to the person filing on behalf of the foreign person which such foreign person would be required to provide. Whenever information or documentary material is not reasonably available, the person filing on behalf of the foreign person shall so indicate on the Notification and Report Form, and need not supply the statement of reasons for noncompliance required by § 803.3.

(d) Any foreign person on whose behalf notification has been filed by another person pursuant to this section shall be a "person filing notification" for purposes of the act and these rules. Nothing in this section shall exempt a foreign person from the requirements of the act or these rules with respect to a request for additional information or an extension of the waiting period pursuant to section 7A(e) and these rules.

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, attesting that the issuer whose voting securities are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

(i) The identity of the acquiring person;

(ii) The fact that the acquiring person intends to acquire voting securities of the issuer;

(iii) The specific classes of voting and nonvoting securities of the issuer, and the number of securities of each such class sought to be acquired;

(iv) The fact that the acquisition may be subject to the act, and that the acquiring person will file notification under the act with the Federal Trade Commission and Assistant Attorney General;

(v) The anticipated date of receipt of such notification under § 803.10(c); and

(vi) The fact that the person within which the issuer is included may be re-

quired to file notification under the act.

(2) The affidavit required by this paragraph must also state the good faith intention of the person filing notification to make the acquisition, and, in the case of a tender offer, that the intention to make the tender offer has been publicly announced.

Example: This paragraph permits the tender offeror to file notification at any time after the intention to make the tender offer has been publicly announced.

(3) The affidavit required by this paragraph must have attached to it a copy of the written notice received by the acquired person pursuant to paragraph (a)(1) of this section.

(b) *Non-section 801.30 acquisitions.* For acquisitions to which § 801.30 does not apply, the notification required by the act shall contain an affidavit, attached to the front of the notification, attesting that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attesting to the good faith intention of the person filing notification to complete the transaction.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34439, July 29, 1983]

§ 803.6 Certification.

(a) The notification required by the act shall be certified:

(1) In the case of a partnership, by any general partner thereof;

(2) In the case of a corporation, by any officer or director thereof;

(3) In the case of a person lacking officers, directors, or partners, by any individual exercising similar functions;

(4) In the case of a natural person, by such natural person or his or her legal representative.

(5) In the case of the estate of a deceased natural person, by any duly authorized legal representative of such estate.

(b) Additional information or documentary material submitted in response to a request pursuant to section 7A(c) and § 803.20 shall be accompanied by a certification in the format appearing at the end of the Notification and Report Form, completed in accordance with paragraph (a) of this

section by the person or individual to whom it was directed.

(c) In all cases, the certifying individual must possess actual authority to make the certification on behalf of the person filing notification.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34429, July 29, 1983]

§ 803.7 Expiration of notification.

Notification with respect to an acquisition shall expire 1 year following the expiration of the waiting period. If the acquiring person's holdings do not, within such time period, meet or exceed the notification threshold with respect to which the notification was filed, the requirements of the act must thereafter be observed with respect to any notification threshold not met or exceeded.

Example: A files notification that 26 percent of the voting securities of corporation B are to be acquired. One year after the expiration of the waiting period, A has acquired only 22 percent of B's voting securities. Although § 802.21 will permit "A" to purchase any amount of B's voting securities short of 25 percent within 5 years from the expiration of the waiting period, A's holdings may not meet or exceed the 25 percent notification threshold without "A" and "B" again filing notification and observing a waiting period.

§ 803.8 Foreign language documents.

(a) Whenever at the time of filing a Notification and Report Form there is an English language outline, summary, extract or verbatim translation of any information or of all or portions of any documentary materials in a foreign language required to be submitted by the act or these rules, all such English language versions shall be filed along with the foreign language information or materials.

(b) Documentary materials or information in a foreign language required to be submitted in responses to a request for additional information or documentary material shall be submitted with verbatim English language translations, or all existing English language versions, or both, as specified in such request.

[48 FR 34440, July 29, 1983]

§ 803.10 Running of time.

(a) *Beginning of waiting period.* The waiting period required by the act shall begin on the date of receipt of the notification required by the act, in the manner provided by these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance in accordance with § 803.3) from:

(1) In the case of acquisitions to which § 801.30 applies, the acquiring person;

(2) In the case of all other acquisitions, all persons required by the act and these rules to file notification.

(b) *Expiration of waiting period.* (1) For purposes of section 7A(b)(1)(B), the waiting period shall expire at 11:59 p.m. Eastern Time on the 30th (or in the case of a cash tender offer, the 15th) calendar day (or if § 802.23 applies, such other day as that section may provide) following the beginning of the waiting period as determined under paragraph (a) of this section, unless extended pursuant to section 7A(e) and § 803.20, or section 7A(g)(2), or unless terminated pursuant to section 7A(b)(2) and § 803.11.

(2) Unless further extended pursuant to section 7A(g)(2), or terminated pursuant to section 7A(b)(2) and § 803.11, any waiting period which has been extended pursuant to section 7A(e)(2) and § 803.20 shall expire at 11:59 p.m. Eastern Time—

(i) On the 20th (or, in the case of a cash tender offer, the 10th) day following the date of receipt of all additional information or documentary material requested from all persons to whom such requests have been directed (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3), by the Federal Trade Commission or Assistant Attorney General, whichever requested additional information or documentary material, at the office designated in paragraph (c) of this section, or

(ii) As provided in paragraph (b)(1) of this section, whichever is later.

(c)(1) *Date of receipt and means of delivery.* For purposes of this section

the date of receipt shall be the date on which delivery is effected to the designated offices (Premerger Notification Office, Room 303, Federal Trade Commission, Washington, DC 20560, and Director of Operations, Antitrust Division, Room 3214, Department of Justice, Washington, DC 20530) during normal business hours. Delivery effected after 5 p.m. eastern time on a regular business day, or at any time on any day other than a regular business day, shall be deemed effected on the next following regular business day. Delivery should be effected directly to the designated office(s), either by hand or by certified or registered mail. If delivery of all required filings to all offices required to receive such filings is not effected on the same date, the date of receipt shall be the latest of the dates on which delivery is effected.

Examples: 1. In an acquisition other than a cash tender offer, assume that a request for additional information is issued to a person on the second day of the waiting period, and that the person supplies the response 5 days later. Under subparagraph (b)(2)(ii), the waiting period remains in effect through the 30th day, even though the 20th day after receipt of such additional information would occur earlier.

2. In an acquisition other than a tender offer, assume that requests for additional information are issued to both the acquiring and acquired persons on the 25th day of the waiting period. One person submits the additional information on the 25th day, while the other responds on the 44th day. Under this section, the waiting period expires twenty days following the last receipt of additional information, that is, it expires on the 64th day.

(2) *Deficient filings.* If notification or a response to a request for additional information or documentary material received by the Commission or Assistant Attorney General does not comply with these rules, the Commission or the Assistant Attorney General shall promptly notify the person filing such notification or response of the deficiencies in such filing, and the date of receipt shall be the date on which a filing which complies with these rules is received.

[43 FR 33548, July 31, 1978; 43 FR 36054, Aug. 15, 1978]

§ 803.11 Termination of waiting period.

(a) Except as provided in paragraph (c) of this section, no waiting period shall be terminated pursuant to section 7A(c)(2) unless—

(1) All notifications required to be filed with respect to the acquisition by the act and these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance in accordance with § 803.3) have been received,

(2) It has been determined that no additional information or documentary material pursuant to section 7A(e) and § 803.20 will be requested, or, if such additional information or documentary material has been requested, it (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3) has been received, and

(3) The Federal Trade Commission and the Assistant Attorney General have concluded that neither intends to take any further action within the waiting period.

(b) Any request for additional information or documentary material pursuant to section 7A(e) and § 803.20 shall constitute a denial of all pending requests for termination of the waiting period.

(c) The Federal Trade Commission and the Assistant Attorney General may in their discretion terminate a waiting period upon the written request of any person filing notification, or, notwithstanding paragraph (a) of this section, sua sponte. A request for termination of the waiting period shall be sent to the offices designated in § 803.10(c). Termination shall be effective upon notice to any requesting person by telephone, and such notice shall be given as soon as possible. Such notice shall also be confirmed in writing to each person which has filed notification, and notice thereof shall be published in the FEDERAL REGISTER in accordance with section 7A(b)(2).

Example: See the example to § 803.20(c).

§ 803.20 Requests for additional information or documentary material.

(a)(1) *Persons and individuals subject to request.* Pursuant to section 7A(e)(1), the submission of additional information or documentary material relevant to the acquisition may be required from one or more persons required to file notification, and, with respect to each such person, from one or more entities included therein, or from one or more officers, directors, partners, agents, or employees thereof, if so required by the same request.

Example: A request for additional information may require a corporation and, in addition, a named officer or employee to provide certain information or documents, if both the corporation and the officer or employee are named in the same request. See subparagraph (b)(3) of this section.

(2) All the information and documentary material required to be submitted pursuant to a request under paragraph (a)(1) of this section shall be supplied to the Commission or to the Assistant Attorney General, whichever made such request, at such location as may be designated in the request, or, if no such location is designated, at the office designated in § 803.10(c). If such request is not fully complied with, a statement of reasons for noncompliance pursuant to § 803.3 shall be provided for each item or portion of such request which is not fully complied with.

(b)(1) *Who may require submission.* A request for additional information or documentary material with respect to an acquisition may be issued by the Federal Trade Commission or its designee, or by the Assistant Attorney General or his or her designee, but not by both to the same person, any entities included therein, or any officers, directors, partners, agents, or employees of that person.

(2) *When request effective.* A request for additional information or documentary material shall be effective—

(i) In the case of a written request, upon receipt of the request by the ultimate parent entity of the person to which the request is directed, (or, if another entity included within the person filed notification pursuant to § 803.2(a), then by such entity), within

the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides); or

(ii) In the case of a written request, upon notice of the issuance of such request to the person to which it is directed within the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides), provided that written confirmation of the request is mailed to the person to which the request is directed within the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides). Notice to the person to which the request is directed may be given by telephone or in person. The person filing notification shall keep a designated individual reasonably available during normal business hours throughout the waiting period through the telephone number supplied on the certification page of the Notification and Report Form. Notice of a request for additional information or documentary material need be given by telephone only to that individual or to the individual designated in accordance with paragraph (b)(2)(iii) of this section. Upon the request of the individual receiving notice of the issuance of such a request, the full text of the request will be read. The written confirmation of the request shall be mailed to the ultimate parent entity of the person filing notification, or if another entity within the person filed notification pursuant to § 803.2(a), then to such entity.

(iii) When the individual designated in accordance with paragraph (b)(2)(ii) of this section is not located in the United States, the person filing notification shall designate an additional individual located within the United States to be reasonably available during normal business hours throughout the waiting period through a telephone number supplied on the certification page of the Notification and Report Form. This individual shall be designated for the limited purpose of receiving notification of the issuance of requests for additional

information or documentary material in accordance with the procedure described in paragraph (b)(2)(ii) of this section.

(3) *Requests to natural persons.* A request addressed to an individual, requiring that he or she submit additional information or documentary material, shall be transmitted to the person filing notification of which the individual is an ultimate parent entity, officer, director, partner, agent or employee, and shall be effective as to that individual when effective as to the person filing notification pursuant to paragraph (b)(2) of this section. A written copy of the request shall also be delivered to the individual by hand, or by registered or certified mail at his or her home or business address.

Example: A designee of the Federal Trade Commission sends, by certified letter which is received within the 30-day waiting period, a written request for additional information to corporation W, the ultimate parent entity within a person which filed notification. The request is effective under clause (b)(2)(i). If the letter also addressed a request for documentary material to the secretary of corporation W, a named individual, under paragraph (b)(3), the request would likewise be effective as to the individual upon receipt of the letter by W. In the latter case, the Federal Trade Commission also would send a copy of the request to the Secretary of the corporation at his or her home or business address.

(c) *Waiting period extended.* (1) During the time period when a request for additional information or documentary material remains outstanding to any person other than, in the case of a tender offer, the person whose voting securities are sought to be acquired by the tender offeror (or any officer, director, partner, agent or employee thereof), the waiting period shall remain in effect, even though the waiting period would have expired (see § 803.10(b)) if no such request had been made.

(2) A request for additional information or documentary material to any person other than, in the case of a tender offer, the person whose voting securities are being acquired pursuant to the tender offer (or any officer, director, partner, agent or employee thereof) shall in every instance extend

the waiting period for a period of 20 (or, in the case of a cash tender offer, 10) calendar days from the date of receipt (as determined under § 803.10) of the additional information or documentary material requested.

Example: Acquiring person "A" desires to acquire voting securities of corporation X on a securities exchange, and files notification. Under § 803.30, the waiting period begins upon filing by "A," and "X" must file within 15 days thereafter. Assume that before the end of the waiting period, the Assistant Attorney General issues a request for additional information to "X." Since the transaction is not a tender offer, under paragraph (c)(1) the waiting period is extended until "X" supplies the requested information; under paragraph (c)(2), the waiting period is extended for 20 days beyond the date on which "X" responds.

Note that under § 803.21 "X" is obliged to respond to the request within a reasonable time; nevertheless, the Federal Trade Commission and Assistant Attorney General could, notwithstanding the pendency of the request for additional information, terminate the waiting period sua sponte pursuant to § 803.11(c).

(d)(1) *Identification of requests.* Every request for additional information or documentary material shall be clearly identified as such, whether communicated in person, by telephone or in writing, and shall clearly identify the person, entity or entities, or individual(s) to which it is addressed.

(2) *Request for clarification.* No request for clarification or amplification of a response to any item on the Notification and Report Form, whether communicated in person, by telephone or in writing, shall be considered a request for additional information or documentary material within the meaning of section 7A(e) and this section.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34441, July 29, 1983]

§ 803.21 Additional information shall be supplied within reasonable time.

All additional information or documentary material requested pursuant to section 7A(e) and § 803.20 (or, if such request is not fully complied with, the information or documentary material submitted and a statement of the reasons for such noncompliance in

accordance with § 803.3) shall be supplied within a reasonable time.

§ 803.30 Formal and informal interpretations of requirements under the Act and the rules.

(a) The Commission staff may consider requests for formal or informal interpretations as to the obligations under the act and these rules of any party to an acquisition. A request for a formal interpretation shall be made in writing to the offices designated in § 803.10(c), and shall state:

(1) All facts which the applicant believes to be material, (2) the reasons why the requirements of the act are or may be applicable and (3) the question(s) that the applicant wishes resolved. The Commission staff may, in its discretion, render a formal or informal response to any request, however made, or may decline to render such advice.

(b) In the sole discretion of the staff, any request for interpretation may be referred to the Commission.

(c) Formal interpretations by the Commission staff or by the Commission shall be rendered with the concurrence of the Assistant Attorney General or his or her designee.

(d) Any formal interpretation shall be without prejudice to the right of either the Commission or the Assistant Attorney General to rescind any such interpretation rendered pursuant to this section. In the event of such rescission, the party which requested the interpretation shall be so notified in writing.

(e) The Commission shall publish a summary of formal interpretations by the Commission, and any rescissions thereof, in the FEDERAL REGISTER.

§ 803.90 Separability.

If any provision of the rules in this Subchapter (H) (including the Notification and Report Form) or the application of any such provision to any person or circumstances is held invalid, neither the other provisions of the rules nor the application of such provision to other persons or circumstances shall be affected thereby.

**ANTITRUST IMPROVEMENTS ACT
NOTIFICATION AND REPORT FORM
for Certain Mergers and Acquisitions**

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-16), constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These Instructions specify the information which must be provided in response to the items on the Answer Sheets. Only the completed Answer Sheets, together with all documentary attachments are to be filed with the Federal Trade Commission and the Department of Justice.

The term "documentary attachments" refers to materials supplied in responses to Item 2(f)(i), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information.—The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 301, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 523-3894.

Definitions.—The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) and 48 FR 34427 (July 29, 1983).

Affidavit.—Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 801.5(a).)

Responses.—Each answer should identify the item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each item. Each additional sheet should identify at the top of the page the item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be so identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should

Privacy Act Statement.—Section 18(a)(1) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws. Furnishing the information on this Form is voluntary.

be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year.—All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

SIC Data.—This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 4-digit (SIC code) industry level. To the extent that dollar revenues are derived from manufactured operations (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC codes).

The term "dollar revenues" is defined in § 803.2(d).

References.—In reporting information by "4-digit (SIC code) industry" refer to the 1972 edition of the *Standard Industrial Classification Manual* and its 1977 supplement published by the Executive Office of the President, Office of Management and Budget.

In reporting information by "5-digit (SIC code) product class" and "7-digit (SIC code) product" refer to one or both of the following reference publications published by the U.S. Bureau of the Census:

(a) Numerical List of Manufactured Products, 1977 Census of Manufactures (MC77-R-1)

(b) Volume II, "Industry Statistics," 1977 Census of Manufactures

In reporting information by "5-digit (SIC code) product class" refer, if necessary, to the code appearing in the "Product Class Reference List" shown in the *Instruction Manual for the Annual Survey of Manufactures*. In reporting information by "7-digit (SIC code) product," you may also refer to the applicable "Product Reference Lists" appearing in the *Instruction Manual of the various Current Industrial Reports* surveys (monthly, quarterly, or annually) conducted by the U.S. Bureau of the Census.

Note: Do not submit information for product codes ending in 00. Instead, submit information by product listed in Appendix B to the Numerical List of Manufactured Products listed above. Only if Appendix B does not contain a further breakdown for product codes ending in 00 may these codes be used.

Consumption of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to \$10,000 per day.

Items 5, 7, 8, 9 and the Insurance Appendix.—Supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. (See § 801.1(k), 803.2(c)(1).)

Information need not be supplied regarding assets or voting securities currently being acquired, when the acquisition is exempt under the statute or rules. (See § 803.2(c)(2).)

Limited or separate responses may be required from the person filing notification. (See § 803.2(b).)

Filing.—Complete and return two notarized copies (with one set of documentary attachments) of this Notification and Report Form to the Premier Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and three notarized copies (with one set of documentary attachments) to Director of Operations, Antitrust Division, Department of Justice, Room 3218, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

ITEM BY ITEM

Affidavit.—Attach the affidavit required by § 803.5 to page 1 of the Answer Sheets. Acquiring persons in transactions covered by § 801.30 are required to also submit a copy of the notice served on the acquired person pursuant to § 803.5 (a)(1). (See § 803.5 (a)(3).)

Cash Tender Offer.—Put an X in the appropriate box to indicate whether the acquisition is a cash tender offer.

Early Termination.—Put an X in the yes box to request early termination of the waiting period. Notification of each grant of early termination will be published in the Federal Register as required by § 7A(b)(2) of the Clayton Act.

ITEM 1

Item 1(a).—Give the name and headquarters address of the person filing notification. The name of the person is the name of the ultimate parent entity included within that person.

Item 1(b).—Indicate whether the person filing notification is an acquiring person, an acquired person, or both an acquiring and acquired person. (See § 801.2.)

Item 1(c).—Give the names of all ultimate parent entities of acquiring and acquired persons which are parties to the acquisition whether or not they are required to file notification.

Item 1(d).—Put an X in all the boxes that apply to this acquisition.

Item 1(e).—Acquiring persons put an X in the box to indicate the highest threshold for which notification is being filed (see § 801.1 (h)): \$15 million, 15%, 25%, or 50%.

Item 1(f).—All persons state the value of voting securities held as a result of the acquisition and/or the value of assets held as a result of the acquisition. (Insert responses to Item 3(c).)

Item 1(g).—Put an X in the appropriate box to indicate

whether the entity in Item 1(a) is a corporation, partnership, or other (specify).

Item 1(h).—Put an X in the appropriate box to indicate whether data furnished is by calendar year or fiscal year. If fiscal year, specify period.

Item 1(i).—Put an X in the appropriate box to indicate if this Form is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file notification on its behalf pursuant to § 803.2(a), or if this Form is being filed pursuant to § 803.4 on behalf of a foreign person. Then provide the name and mailing address of the entity filing notification on behalf of the reporting person named in Item 1(a) on the Form.

Item 1(j).—If an entity within the person filing notification other than the ultimate parent entity listed in Item 1(a) is the entity which is making the acquisition, or if the assets or voting securities of an entity other than the ultimate parent entity listed in Item 1(a) are being acquired, provide the name and mailing address of that entity and the percentage of its voting securities held by the person named in Item 1(a) above. (If control is effected by means other than the direct holding of the entity's voting securities, describe the intermediaries or the contract through which control is effected (see § 801.1(b)).)

ITEM 2

Item 2(a).—Description of acquisition. Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification and a description of the assets or voting securities to be acquired by and/or the consideration to be received by each party. If voting securities are to be acquired from a holder other than the issuer (or an entity within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons in tender offers should describe the terms of the offer.

Item 2(b).—State the scheduled consummation date of the transaction.

Item 2(c).—Describe the manner in which the transaction is to be carried out. The description should include the expected dates of any major events required in order to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers).

Item 2(d)(i).—Assets to be acquired. This item is to be completed only to the extent that the transaction is an acquisition of assets. Describe all general classes of assets (other than cash and securities) to be acquired by each party to the transaction giving approximate dollar values thereof. If the transaction is the formation of a joint venture or other corporation (see § 801.4(g)), include assets to be acquired by the joint venture or other corporation.

Give the approximate total value or estimated total value of the assets to be acquired in this transaction.

Examples of general classes of assets other than cash and

securities are land, merchandising inventory, manufacturing plants (specify location and products produced), and retail stores. For each general class of assets, indicate the page or paragraph number of the contract or other document submitted with this Form in which the assets are more particularly described.

Item 2(d)(ii)—Assets held by acquiring person. (To be completed by acquiring persons.) If assets of the acquired person (see § 801.13) are presently held by the person filing notification, furnish a description of each general class of such assets in the manner required by Item 2(d)(i), and the dollar value or estimated dollar value at the time they were acquired.

Item 2(e)—Voting securities to be acquired. Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition:

Item 2(e)(i)—List each class of voting securities (including convertible voting securities) which will be outstanding after the acquisition has been completed. If there is more than one class of voting securities, include a description of the voting rights of each class. Also list each class of non-voting securities which will be acquired in the acquisition.

Item 2(e)(ii)—Total number of shares of each class of securities listed on page 3 which will be outstanding after the acquisition has been completed.

Item 2(e)(iii)—Total number of shares of each class of securities listed on page 3 which will be acquired in this acquisition. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person.

Item 2(e)(iv)—Identity of each person acquiring any securities of any class listed on page 3. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person.

Item 2(e)(v)—Dollar value of securities of each class listed on page 3 to be acquired in this transaction (see § 801.10). If there is more than one acquiring person of any class of securities, show data separately for each acquiring person. (If the exact dollar value cannot be determined at the time of filing, provide an estimated value and indicate the basis on which the estimate was made.)

Item 2(e)(vi)—Total number of each class of securities listed on page 3 which will be held by acquiring person(s) after the acquisition has been accomplished. If there is more than one acquiring person for any class of securities, show data separately for each acquiring person.

Item 2(e)(vii)—Percentage of each class of securities listed under 2(e)(vi) above which will be held by the acquiring person(s) after the acquisition has been completed (see § 801.12(b)). If there is more than one acquiring person for any class of security, show data separately for each acquiring person.

Item 2(e)(viii)—Dollar value (or estimated dollar value) of securities to be held as a result of the acquisition (see § 801.13).

Item 2(f)(i)—Furnish copies of final or most recent versions of all documents which constitute the agreement among the acquiring person(s) and the person(s) whose voting securities or assets are to be acquired. (Do not attach these documents to page 4 of the Answer Sheets.)

Item 2(f)(ii)—Index to ancillary documents. Furnish an index containing a brief description sufficient to identify each ancillary document or class of documents related to this agreement, such as those relating to personnel matters (e.g., union contracts, employment agreements), third-party financing agreements, leases, subleases and other documents relating to the transfer of realty, or other similar documents related to this transaction.

ITEM 3

Assets and voting securities held as a result of the acquisition (to be completed by both acquiring and acquired persons): State

Item 3(a)—the percentage of the assets.

Item 3(b)—the percentage of the voting securities.

Item 3(c)—the aggregate total dollar amount of voting securities and assets of the acquired person to be held by each acquiring person, as a result of the acquisition (see §§ 801.12, 801.13, and 801.14).

ITEM 4

Furnish one copy of each of the following documents. For each entity included within the person filing notification which has prepared its own such documents different from those prepared by the person filing notification, furnish, in addition, one copy of each document from each such other entity. Furnish copies of:

Item 4(a)—all of the following documents which have been filed with the United States Securities and Exchange Commission (or are to be filed contemporaneously in connection with this acquisition): the most recent proxy statement and Form 10-K, each dated not more than three years prior to the date of this Notification and Report Form; all Forms 10-Q and 8-K filed since the end of the period reflected by the Form 10-K being supplied; any registration statement filed in connection with the transaction for which notification is being filed, if the acquisition is a tender offer, Schedule 14D-1. Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance;

NOTE: In response to Item 4(a), the person filing notification may incorporate by reference documents submitted with an earlier filing as explained in the staff formal interpretations dated April 10, 1979, and April 7, 1981, and in § 803.2(a).

Item 4(b)—the most recent annual reports and most recent annual audit reports (of person filing notification and of each unconsolidated United States issuer included within such person) and, if different, the most recent regularly prepared balance sheet of the person filing notification and of each unconsolidated United States issuer included within such person.

III

Item 4(c)—all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, and indicate (if not contained in the document itself) the date of preparation, the name and title of each individual who prepared each such document.

Persons filing notification may provide an optional index of documents called for by Item 4 on page 5 of the Answer Sheets.

NOTE: If the person filing notification withholds any documents called for by Item 4(c) based on a claim of privilege, the person must provide a statement of reasons for such noncompliance as specified in the staff formal interpretation dated September 13, 1979, and § 803.3(d).

ITEMS 5 through 9 and the Appendix

NOTE: For Items 5 through 9 and the Appendix limited or separate responses may be required of the person filing notification. (See § 803.2(b) and (c).)

ITEM 5

ITEM 5(a) — 5(c): These items request information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 4-digit (SIC code) industry level. To the extent that dollar revenues are derived from manufacturing operations (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC codes). (See General Instructions to the Form.) Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within 2-digit major group 63. Credit agencies other than banks, security and commodity brokers, dealers, exchanges, and services, holding and other investment offices, and real estate companies (2-digit SIC major groups 61, 62, 67 and 85) should identify or explain the revenues reported (e.g., dollar sales, receipts).

Persons filing notification should include the total dollar revenues for 1977 derived by all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 1977). For example, if the person filing notification acquired an entity in 1980, it must include that entity's 1977 revenues in Items 5(a) and 5(b)(i).

Item 5(a)—Dollar revenues by industry. Provide aggregate 4-digit (SIC code) industry data for 1977.

Item 5(b)(i)—Dollar revenues by manufactured product. Provide the following information on the aggregate operations of the person filing notification for 1977 for each 7-digit (SIC code) product of the person in 2-digit SIC major groups 20-39 (manufacturing industries):

Do not provide 7-digit data for product codes ending in 00

instead, submit information by product listed in Appendix B to the Numerical List of Manufactured Products. Only if Appendix B does not contain a further breakdown for product codes ending in 00 may these codes be used.

Item 5(b)(ii)—Products added or deleted. Within 2-digit SIC major groups 20-39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1977, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 7-digit SIC code or in the manner ordinarily used by the person filing notification.

Do not include products added since 1977 by reason of mergers or acquisitions occurring since 1977. Dollar revenues derived from such products such be included in response to Item 5(b)(i). However, if an entity acquired since 1977 by the person filing notification (and now included within the person) itself has added any products since 1977, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets or voting securities since 1977 should also be listed here.

Item 5(b)(iii)—Dollar revenues by manufactured product class. Provide the following information about the aggregate operations of the person filing notification for the most recent year for each 5-digit (SIC code) product class of the person within SIC major groups 20-39 (manufacturing industries). If such data have not been compiled for the most recent year, estimates of dollar revenues by 5-digit product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)—Dollar revenues by non-manufacturing industry. Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: This million dollar minimum is applicable only to Item 5(c).

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly should complete the Insurance Appendix to this Form.

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)—Supply the following information only if the acquisition is the formation of a joint venture or other corporation. (See § 801.40.)

Item 5(d)(i)—List the name and mailing address of the joint venture or other corporation.

IV

Item 5(d)(ii)(A)—List contributions that each person forming the joint venture or other corporation has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(d)(ii)(B)—Describe any contracts or agreements whereby the joint venture or other corporation will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)—Specify whether and in what amount the persons forming the joint venture or other corporation have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)—Describe fully the consideration which each person forming the joint venture or other corporation will receive in exchange for its contribution(s).

Item 5(d)(iii)—Describe generally the business in which the joint venture or other corporation will engage, including location of headquarters and principal plants, warehouses, retail establishments, or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(d)(iv)—Identify each 4-digit (SIC code) industry in which the joint venture or other corporation will derive dollar revenues. If the joint venture or other corporation will be engaged in manufacturing, also specify each 5-digit (SIC code) product class in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired.

Item 6(a)—Entities within person filing notification: List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than \$1 million may be omitted.

Item 6(b)—Shareholders of person filing notification: For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than \$10 million.

Item 6(c)—Holdings of person filing notification: If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holdings of issuers with total assets of less than \$10 million, may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification,

the person filing notification derived dollar revenues in the most recent year from operations in any 4-digit (SIC code) industries in which any other person which is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture of other corporation will derive dollar revenues), then for each such 4-digit (SIC code) industry:

Item 7(a)—supply the 4-digit SIC code and description for the industry.

Item 7(b)—list the name of each person which is a party to the acquisition which also derived dollar revenues in the 4-digit industry.

Item 7(c)—Geographic market information:

Item 7(c)(i)—for each 4-digit industry within SIC major groups 20-39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold.

Item 7(c)(ii)—for each 4-digit industry within SIC major groups 01-17 and 40-49 (agriculture, forestry and fishing, mining, construction, transportation, communications, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the person filing notification conducts such operations.

Item 7(c)(iii)—for each 4-digit industry within SIC major groups 50-51 (wholesale trade) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the customers of the person filing notification are located.

Item 7(c)(iv)—for each 4-digit industry within SIC major groups 52-62 and 64-39 (retail trade, finance, insurance other than insurance carriers, and real estate and services) listed in Item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification, and:

Item 7(c)(v)—for each 4-digit industry within SIC 63 (insurance) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE Except in the case of these SIC major industry groups mentioned in Item 7(c)(v) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

ITEM 8

Item 8—Put an X in the appropriate box to indicate if the acquired person and an acquiring person maintained a vendor-vender relationship during the most recent year with respect to any manufactured product (or, if the acquisition is the formation of a joint venture or other corporation (see § 801.4(n)), if the joint venture or other corporation will supply to any of the persons forming it any manufactured

V

product which such person purchased from another such person during the most recent year) which the vendee either resells or consumes in or incorporates into the manufacture of any product. Persons filing notification which are vendees of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased and state the dollar amount of the product purchased from that vendor during the most recent year.

Manufactured products are those within 2-digit SIC major groups 20-33. Any product purchased from the vendor in an aggregate annual amount not exceeding \$1 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

ITEM 9

Item 9(a)—Previous acquisitions (to be completed by acquiring persons)—Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of \$1 million or more in the most recent year and in which either the acquired issuer derived revenues of \$1 million or more in the most recent year, (or in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive dollar revenues of \$1 million or more), or revenues of \$1 million or more in the most recent year were attributable to the acquired assets.

For each such 4-digit industry, list all acquisitions made by the person filing notification in the ten years prior to the date of filing of entities deriving dollar revenues in that 4-digit industry. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than \$10 million in the year prior to the acquisition.

For each such acquisition, supply:

- (a) the name of the entity acquired;
- (b) the headquarters address of the entity prior to the acquisition;
- (c) whether securities or assets were acquired;
- (d) the consummation date of the acquisition;
- (e) the annual net sales of the acquired entity for the year prior to the acquisition;
- (f) the total assets of the acquired entity in the year prior to the acquisition; and
- (g) the 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

ITEM 10

Item 10(a)—Print or type the name and title, firm name, address, and telephone number of the individual to contact regarding this Notification and Report Form. (See § 803.20(b)(2)(ii).)

Item 10(b)—Foreign filing persons print or type the name and title, firm name, address, and telephone number of an individual located in the United States designated for the

limited purpose of receiving notice of the issuance of a request for additional information or documentary material. (See § 803.20(b)(2)(iii).)

Certification—(See § 803.6.)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier are being acquired directly or indirectly.

ITEM 1

Item 1(A)—Life Insurance Provide for the most recent year the amount of premium receipts (calculated on the accrual basis) for each of the lines of insurance listed on page 16 of the Answer Sheets.

Item 1(B)—New Business Provide for the most recent year the amount of new life insurance business issued in the United States (exclusive of renewals, increases, dividend additions and reinsurance ceded) for each of the lines of insurance listed on page 16 of the Answer Sheets.

ITEM 2

Item 2(A)—Property Liability Insurance Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

Item 2(B)—Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

ITEM 3

Item 3(A)—Title Insurance Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

Item 3(B)—Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

16 C.F.R. Part 803 - Appendix

NOTIFICATION AND REPORT FORM FOR CERTAIN MERGERS AND ACQUISITIONS

THE INFORMATION REQUIRED TO BE SUPPLIED ON THESE ANSWER SHEETS IS SPECIFIED IN THE INSTRUCTIONS

Approved by: OMB
3284-0005
Expires: 9-30-88

ATTACH the Affidavit required by § 803.5 to this page

Is this Acquisition a CASH TENDER OFFER?

☐ YES☐ NODo you request Early Termination of the Waiting Period?
(Rights of early termination are published in the Federal Register.)☐ YES☐ NO

ITEM 1

(a) NAME AND HEADQUARTERS ADDRESS OF PERSON FILING NOTIFICATION (ultimate parent entity):

FOR OFFICE USE ONLY

TRANSACTION NUMBER

☐ CTO ☐ ETR

(b) PERSON FILING NOTIFICATION IS:

☐ an acquiring person☐ an acquired person☐ both

(c) LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRING PERSONS

LIST NAMES OF ULTIMATE PARENT ENTITIES OF ALL ACQUIRED PERSONS

(d) THIS ACQUISITION IS PUT AN X IN ALL THE BOXES THAT APPLY:

☐ an acquisition of assets☐ a merger (see § 801.2)☐ an acquisition subject to § 801.2(a)☐ formation of a joint venture or other corporation (see § 801.40)☐ an acquisition subject to § 801.30 (specify type):☐ other (specify):☐ a consolidation (see § 801.2)☐ an acquisition of voting securities☐ a secondary acquisition☐ an acquisition subject to § 801.31

(e) INDICATE HIGHEST NOTIFICATION THRESHOLD IN § 801.1(b) FOR WHICH THIS FORM IS BEING FILED (acquiring person only):

☐ \$ 15 million☐ 15%☐ 25%☐ 50%

(f) VALUE OF VOTING SECURITIES

VALUE OF ASSETS

(g) PUT AN X IN THE APPROPRIATE BOX TO DESCRIBE ENTITY FILING NOTIFICATION

☐ corporation☐ partnership☐ other (specify):

(h) DATA FURNISHED BY

☐ calendar year☐ fiscal year (specify period):

(specify) to

(specify)

(i) PUT AN X IN THE APPROPRIATE BOX AND GIVE THE NAME AND ADDRESS OF THE ENTITY FILING NOTIFICATION (if other than ultimate parent entity):

☐ NA☐ This report is being filed on behalf of a foreign person pursuant to § 803.4☐ This report is being filed on behalf of the ultimate parent entity by another entity within the same person authorized by it to file pursuant to § 803.2(a)

NAME OF ENTITY FILING NOTIFICATION

ADDRESS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to § 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-432, 90 Stat. 1380, and rules promulgated thereunder (hereinafter referred to as "the rules") or by section number. The statute and rules are set forth in the Federal Register at 43 FR 32450; the rules may also be found at 16 CFR Parts 801-03. Failure to file this Notification and Report Form, and to observe the required waiting period before consummating the acquisition, in accordance with the applicable provisions of 15 U.S.C. § 18a and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than \$10,000 for each day during which such person is in violation of 15 U.S.C. § 18a.

All information and documentary material filed in or with this Form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Complete and return two notarized copies (with one set of documentary attachments) of this Notification and Report Form to Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and three notarized copies (with one set of documentary attachments) to Director of Operations, Antitrust Division, Room 3218, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this Notification and Report Form is Room 301, Federal Trade Commission, Washington, D.C. 20580; phone (202) 525-3894.

Federal Trade Commission

Part 803, Appendix

NAME OF PERSON FILING NOTIFICATION

DATE

(1) NAME AND ADDRESS OF ENTITY MAKING ACQUISITION OR WHOSE ASSETS OR VOTING SECURITIES ARE BEING ACQUIRED, IF DIFFERENT FROM THE ULTIMATE PARENT ENTITY IDENTIFIED IN ITEM 1(a)

PERCENT OF VOTING SECURITIES HELD BY ENTITY IDENTIFIED IN ITEM 1(a)

ITEM 2

2(a) DESCRIPTION OF ACQUISITION

(b) SCHEDULED DATE OF CONSUMMATION

(c) MANNER IN WHICH THE ACQUISITION IS TO BE CARRIED OUT

NAME OF PERSON FILING NOTIFICATION

DATE

2000 ASSETS TO BE ACQUIRED (to be completed only for assets acquisitions)

2000 ASSETS HELD BY ACQUIRING PERSON

2000 VOTING SECURITIES TO BE ACQUIRED

2000 LIST AND DESCRIPTION OF VOTING SECURITIES AND LIST OF NON-VOTING SECURITIES

2000 TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY

2000 TOTAL NUMBER OF SHARES OF EACH CLASS OF SECURITY BEING ACQUIRED

(Item 2 is continued on page 4)

Federal Trade Commission

Part 803, Appendix

NAME OF PERSON FILING NOTIFICATION

DATE

(b)(1) IDENTIFY PERSONS ACQUIRING SECURITIES

(b)(2) DOLLAR VALUE OF SECURITIES IN EACH CLASS BEING ACQUIRED

(b)(3) TOTAL NUMBER OF EACH CLASS OF SECURITIES HELD BY ACQUIRING PERSON AS A RESULT OF THE ACQUISITION

(b)(4) PERCENTAGE OF EACH CLASS OF SECURITIES HELD BY ACQUIRING PERSON AS A RESULT OF THE ACQUISITION

(b)(5) DOLLAR VALUE OF SECURITIES TO BE HELD AS A RESULT OF THE ACQUISITION

(b)(6) SUBMIT A COPY OF MOST RECENT VERSION OF CONTRACT OR AGREEMENT (or letter of intent to merge or acquire)

DO NOT ATTACH THIS DOCUMENT TO THIS PAGE

ATTACHMENT OR REFERENCE NUMBER OF CONTRACT OR AGREEMENT

(b)(7) INCLUDE AN INDEX OF ANCILLARY DOCUMENTS

4

NAME OF PERSON FILING NOTIFICATION

DATE

ITEM 3

ASSETS AND VOTING SECURITIES HELD AS A RESULT OF THE ACQUISITION

(a) PERCENTAGE OF ASSETS

(b) PERCENTAGE OF VOTING SECURITIES

(c) AGGREGATE TOTAL VALUE

ITEM 4 PERSONS FILING NOTIFICATION MAY PROVIDE BELOW AN OPTIONAL INDEX OF DOCUMENTS REQUIRED TO BE SUBMITTED BY ITEM 4 (SEE ITEM 4 BY ITEM INSTRUCTIONS). THESE DOCUMENTS SHOULD NOT BE ATTACHED TO THIS PAGE.

(a) DOCUMENTS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ATTACHMENT OR REFERENCE NUMBER

(b) ANNUAL REPORTS, ANNUAL REPORTS, AND REGULARLY PREPARED BALANCE SHEETS

ATTACHMENT OR REFERENCE NUMBER

(c) STUDIES, SURVEYS, ANALYSES, AND REPORTS

ATTACHMENT OR REFERENCE NUMBER

Federal Trade Commission**Part 803, Appendix**

NAME OF PERSON FILING NOTIFICATION

DATE

ITEM 5

9000 DOLLAR REVENUES BY INDUSTRY

4 DIGIT
INDUSTRY CODE

DESCRIPTION

1977 TOTAL
DOLLAR REVENUES

e

NAME OF PERSON FILING NOTIFICATION

DATE

1987 DOLLAR REVENUES BY MANUFACTURED PRODUCTS

7 DIGIT
PRODUCT CODE

DESCRIPTION

1987 TOTAL
DOLLAR REVENUES

Federal Trade Commission

Part 803, Appendix

NAME OF PERSON FILING NOTIFICATION _____ DATE _____

PRODUCTS ADDED OR DELETED

DESCRIPTION (7 DIGIT PRODUCT CODE)

ADD

DELETE

YEAR
OF
CHANGETOTAL DOLLAR
REVENUES

DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS

3-DIGIT
PRODUCT CLASS
CODE

DESCRIPTION

YEAR

TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION

DATE

803.001 DOLLAR REVENUES BY MANUFACTURED PRODUCT CLASS. CONTINUED5-DIGIT
PRODUCT CLASS
CODE

DESCRIPTION

YEAR

TOTAL DOLLAR REVENUES

803.002 DOLLAR REVENUES BY NON-MANUFACTURING INDUSTRY5-DIGIT
INDUSTRY
CODE

DESCRIPTION

YEAR

TOTAL DOLLAR REVENUES

Federal Trade Commission

Part 803, Appendix

NAME OF PERSON FILING NOTIFICATION

DATE

Subj: COMPLETE ONLY IF ACQUISITION IS THE FORMATION OF A JOINT VENTURE OR OTHER CORPORATION

Subj: NAME AND ADDRESS OF THE JOINT VENTURE OR OTHER CORPORATION

Subj:

(a) CONTRIBUTIONS THAT EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION HAS AGREED TO MAKE

(b) DESCRIPTION OF ANY CONTRACTS OR AGREEMENTS

(c) DESCRIPTION OF ANY CREDIT GUARANTEES OR OBLIGATIONS

(d) DESCRIPTION OF CONSIDERATION WHICH EACH PERSON FORMING THE JOINT VENTURE OR OTHER CORPORATION WILL RECEIVE

Subj: DESCRIPTION OF THE BUSINESS IN WHICH THE JOINT VENTURE OR OTHER CORPORATION WILL ENGAGE

Subj: SOURCE OF DOLLAR REVENUES BY 4 DIGIT SIC CODE

NAME OF PERSON FILING NOTIFICATION

DATE

ITEM 8

800 ENTITIES WITHIN PERSON FILING NOTIFICATION

800 SHAREHOLDERS OF PERSON FILING NOTIFICATION

NAME OF PERSON FILING NOTIFICATION

DATE

ALL HOLDINGS OF PERSON FILING NOTIFICATION

ITEM 7 DOLLAR REVENUES

700 4 DIGIT SIC CODE AND DESCRIPTION

700 NAME OF EACH PERSON WHICH ALSO DERIVED DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION

DATE

REG GEOGRAPHIC MARKET INFORMATION

NAME OF PERSON FILING NOTIFICATION

DATE

ITEM 8 VENDOR/VENUEE RELATIONSHIP

☐ NO ☐ YES (If you and you are the vendor, complete the following)

PRODUCT PURCHASES

VENDOR

DOLLAR AMOUNT

ITEM 9 PRIOR ACQUISITIONS (to be completed by acquiring person only)

NAME OF PERSON FILING NOTIFICATION

DATE

ITEM 10 IDENTIFICATION OF PERSON TO CONTACT REGARDING THIS REPORT

NAME OF CONTACT PERSON

TITLE OF CONTACT PERSON

FIRM NAME AND BUSINESS ADDRESS

BUSINESS TELEPHONE NUMBER

1000 IDENTIFICATION OF AN INDIVIDUAL LOCATED IN THE UNITED STATES DESIGNATED FOR THE LIMITED PURPOSE OF RECEIVING NOTICE OF ISSUANCE OF A REQUEST FOR ADDITIONAL INFORMATION OR DOCUMENTS. (See § 803.200-27(a))

NAME

TITLE

ADDRESS

BUSINESS TELEPHONE NUMBER

CERTIFICATION

This NOTIFICATION AND REPORT FORM, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

NAME (Please print or type)

TITLE

SIGNATURE

DATE

Subscribed and sworn to before me at the

City of _____, State of _____

this _____ day of _____, 19____.

Signature _____

My Commission expires _____

(SEAL)

NAME OF PERSON FILING NOTIFICATION

DATE

APPENDIX: INSURANCE

ITEM 1

A PREMIUM RECEIPTS

YEAR

AMOUNT

1 LIFE INSURANCE

1a. ORDINARY LIFE INSURANCE

1b. GROUP LIFE INSURANCE (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance)

1c. INDUSTRIAL LIFE INSURANCE

1d. CREDIT LIFE INSURANCE

2 ANNUITY CONSIDERATIONS

2a. INDIVIDUAL ANNUITY CONSIDERATIONS

2b. GROUP ANNUITY CONSIDERATIONS

3 HEALTH INSURANCE

3a. INDIVIDUAL HEALTH INSURANCE

3b. GROUP HEALTH INSURANCE

TOTAL

B NEW BUSINESS

YEAR

AMOUNT

1 ORDINARY LIFE INSURANCE

2 GROUP LIFE INSURANCE

3 INDUSTRIAL LIFE INSURANCE

4 CREDIT LIFE INSURANCE

TOTAL

ITEM 2 PROPERTY LIABILITY INSURANCE

YEAR

LINE OF INSURANCE

A DIRECT PREMIUMS

B. NET PREMIUMS

ITEM 3 TITLE INSURANCE

A. NET DIRECT PREMIUMS WRITTEN:

B. DIRECT PREMIUMS EARNED

YEAR

SUBCHAPTER I—FAIR DEBT COLLECTION PRACTICES ACT

PART 901—PROCEDURES FOR STATE APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE ACT

Sec.

- 901.1 Purpose.
- 901.2 Application.
- 901.3 Supporting documents.
- 901.4 Criteria for determination.
- 901.5 Public notice of filing.
- 901.6 Exemption from requirements.
- 901.7 Adverse determination.
- 901.8 Revocation of exemption.

AUTHORITY: Pub. L. 95-109, 91 Stat. 874, 15 U.S.C. 1692o; 5 U.S.C. 552.

SOURCE: 44 FR 21005, Apr. 9, 1979, unless otherwise noted.

§ 901.1 Purpose.

This part establishes procedures and criteria whereby States may apply to the Federal Trade Commission for exemption of a class of debt collection practices within the applying State from the provisions of the Fair Debt Collection Practices Act as provided in section 817 of the Act, 15 U.S.C. 1692o.

§ 901.2 Application.

Any State may apply to the Commission pursuant to the terms of this Rule for a determination that, under the laws of that State,¹ any class of debt collection practices² within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under sections 803 through 812 of the Act, and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Commission, signed by the Governor, Attorney General or State official having primary enforce-

¹Any reference to State law herein includes a reference to any regulations that implement State law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that State.

²As applicable, references to "class of debt collection practices" in this rule include one or more such classes of debt collection practices.

ment or responsibility under the State law which is applicable to the class of debt collection practices, and shall be supported by the documents specified herein.

§ 901.3 Supporting documents.

The application shall be accompanied by:

(a) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 803 through 812 of the Act, or to provide greater protection to consumers than sections 803 through 812 of the Act, regarding the class of debt collection practices within that State.

(b) A comparison of each provision of sections 803 through 812 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar to or provide greater protection to consumers than provisions of sections 803 through 812 of the Act and an explanation as to why any differences between the State and federal law are not inconsistent with the provisions of sections 803 through 812 of the Act and do not result in a diminution in the protection otherwise afforded consumers; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Commission in making its determination.

(c) A copy of the full text of the State law that provides for enforcement of the State law referred to in paragraph (a) of this section.

(d) A comparison of the provisions of the State law that provides for enforcement with the provisions of section 814 of the Act, together with reasons supporting the claim that such State law provides for:

(1) Administrative enforcement of the State law referred to in paragraph (a) of this section that is substantially similar to, or more extensive than, the

enforcement provided under section 814 of the Act;

(2) Civil liabilities for a failure to comply with the requirements of the State law that is substantially similar to, or more extensive than, that provided under section 813 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State officials to commence a civil action under circumstances substantially similar to those prescribed in section 813 of the Act, except that such State law may provide a greater damage remedy or other, more extensive remedies;

(3) A statute of limitations that prescribes a period for civil actions of substantially similar duration to that provided under section 813(d) of the Act or a longer period; and

(e) A statement identifying the office designated or to be designated to administer the State law referred to in paragraph (a) of this section, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such State law is to be administratively enforced. The statement should also include reasons to support the claim that there is adequate provision for enforcement of such State law.

§ 901.4 Criteria for determination.

The Commission will consider the criteria set forth below, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to consumers than, the provisions of sections 803 through 812 of the Act regarding the class of debt collection practices within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Commission primarily will consider each provision of the State law in comparison with each corresponding provision in sections 803 through 812 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(a) In order for provisions of State law to be substantially similar to, or provide greater protection to consumers than the provisions of sections 803 through 812 of the Act, the provisions of State law³ at least shall provide that:

(1) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 803 through 812 of the Act.

(2) Debt collectors provide all of the applicable notifications required by the provisions of sections 803 through 812 of the Act, with the content and in the terminology, form, and time periods prescribed by this part pursuant to sections 803 through 812; however, required references to State law may be substituted for the references to Federal law required in this part. Notification requirements under State law in additional circumstances or with additional detail that do not frustrate any of the purposes of the Act may be determined by the Commission to be consistent with sections 803 through 812 of the Act;

(3) Debt Collectors take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by sections 803 through 812 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 803 through 812 of the Act;

(4) Debt Collectors abide by the same or more stringent prohibitions as are prescribed by sections 803 through 812 of the act;

(5) Obligations or responsibilities imposed on consumers are no more costly, lengthy, or burdensome relative to consumers exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or re-

³This subsection is not be construed as indicating that the Commission would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 803 through 812 of the Act.

sponsibilities imposed on consumers in sections 803 through 812 of the act.

(6) Consumers' rights and protections are substantially similar to, or more favorable than, those provided by sections 803 through 812 of the Act under conditions or within time periods that are substantially similar to, or more favorable to consumers than, those prescribed by sections 803 through 812 of the Act.

(b) In determining whether provisions for enforcement of the State law referred to in § 901.3(a) are adequate, consideration will be given to the extent to which, under State law, provision is made for:

(1) Administrative enforcement, including necessary facilities, personnel, and funding;

(2) Civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 813 of the act;

(3) A statute of limitations for civil liability of substantially similar or longer duration as that provided under section 813(d) of the act.

§ 901.5 Public notice of filing.

In connection with any application that has been filed in accordance with the requirements of §§ 901.2 and 901.3 of this rule and following initial review of the application, a notice of such filing shall be published by the Commission in the *FEDERAL REGISTER*, and a copy of such application shall be made available for examination by interested persons during business hours at the Federal Trade Commission, Public Reference Room, Room 130. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Commission regarding that application.

§ 901.6 Exemption from requirements.

If the Commission determines on the basis of the information before it that, under the law of a State, a class of debt collection practices is subject to requirements substantially similar to, or that provide greater protection to consumers than, those imposed under sections 803 through section 812 and 814 of the Act, and that there is

adequate provision for State enforcement, the Commission will exempt the class of debt collection practices in that State from the requirements of sections 803 through 812 and section 814 of the Act in the following manner and subject to the following conditions:

(a) Notice of the exemption shall be published in the *FEDERAL REGISTER*, and the Commission shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 803 through 812 of the Act, and to the Attorney General of the United States. Any exemption granted shall be effective 90 days after the date of publication of such notice in the *FEDERAL REGISTER*.

(b) The appropriate official of any State that receives an exemption shall inform the Commission in writing within 30 days of any change in the State laws referred to in § 901.3 (a) and (c). The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in § 901.3 (b) and (d). The appropriate official of any State that has received such an exemption also shall file with the Commission from time to time such reports as the Commission may require.

(c) The Commission shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the Commission's formal advisory opinions, and informal staff interpretations issued by an authorized official or employee of the Federal Trade Commission) that might necessitate the amendment of State law for the exemption to continue.

(d) No exemption shall extend to the civil liability provisions of section 813 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 803 through 812 of the Act, except to the extent such State law imposes requirements not imposed by the Act or this part.

§ 901.7 Adverse determination.

(a) If, after publication of a notice in the **FEDERAL REGISTER** as provided under § 901.5, the Commission finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Commission shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(b) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Commission finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Commission shall publish in the **FEDERAL REGISTER** a notice of its determination regarding the application and shall furnish a copy of such notice to the State official who made application for such exemption.

§ 901.8 Revocation of exemption.

(a) The Commission reserves the right to revoke any exemption granted under the provisions of this rule, if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 803 through 812 of the Act or that there is not, in fact, adequate provision for State enforcement.

(b) Before revoking any such exemption, the Commission shall notify the appropriate State official of the facts or conduct that, in the Commission's opinion, warrants such revocation, and shall afford that State such opportunity as the Commission deems appropriate in the circumstances to demonstrate or achieve compliance.

(c) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Commission determines that the State has not done so, notice of the Commission's intention to revoke such exemption shall be published in the **FEDERAL REGISTER**. A period of time shall be allowed from the date of such publication for interested persons to submit written comments to the Commission regarding the intention to revoke.

(d) If such exemption is revoked, notice of such revocation shall be published by the Commission in the **FEDERAL REGISTER**, and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of debt collection practices affected within that State shall become subject to the requirements of sections 803 through 812 of the Act, 90 days after the date of publication of the notice in the **FEDERAL REGISTER**.

PARTS 902—999—[RESERVED]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters

Alphabetical List of Agencies Appearing in the CFR

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- VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
- IX Appalachian Regional Commission (Parts 1900-1999)
- XI United States Soldiers' and Airmen's Home (Parts 2100-2199)
- XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499)

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Chap.

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- I** Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
- II** Food and Nutrition Service, Department of Agriculture (Parts 210-299)
- III** Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
- IV** Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
- V** Agricultural Research Service, Department of Agriculture (Parts 500-599)
- VI** Soil Conservation Service, Department of Agriculture (Parts 600-699)
- VII** Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
- VIII** Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
- IX** Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
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- XV** Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
- XVI** Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
- XVII** Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
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